CAND Pay.gov Application for Refund (rev. 10/19)

NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT

APPLICATION FOR REFUND (USDC-CAND PAY.GOV)

PAY.GOV TRANSACTION DETAILS

IMPORTANT:

- Complete all required fields (shown in red*); otherwise, your request may be denied and require resubmission.
- transaction that appears on the docket. This information can be found in the Pay.gov screen receipt or confirmation email. In fields 3-6, enter the information for the incorrect transaction (the one for which you are requesting a refund), not the correct

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	2.	2. Your Email Address: * jpeters@jonesday.com	jonesday.com	8. Full Case Number (if applicable):	pplicable): 3:20-cr-00371
	္အ	3. Receipt Number:*	0971-15180351		Attorney Admission
	4.	4. Transaction Date:*	12/01/2020	33	Civil Case Filing
	5.	5. Transaction Time:*	1:10 pm	9. Fee Type:*	Notice of Appeal
	6.	6. Transaction Amount (Amount to be refunded):*	\$ 310.00		Pro Hac Vice Writ of Habeas Corpus
	10.	10. Reason for Refund Request:* Explain in detail what happened to cause duplicate charges or no fee required.	Explain in detail what hap	pened to cause duplicate cha	ges or no fee require
		For a duplicate charge, provide the correct receipt number in this field. If you paid a filing fee in an abandoned case number, note that case number here (but e-file the refund request in the open case).	orrect receipt number in : ed case number, note that	his field. case number here (but e-file i	he refund request in I
	We f	We filed a Pro Hac Vice and paid the \$310 but it was denied so we refiled it and said we had already paid it and on the docket it says it was not charged but it was on our credit card and is listed being paid twice on the Internet Payment History. Thank you.	t it was denied so we refiled ted being paid twice on the l	it and said we had already paid it nternet Payment History. Thank	and on the docket it say

Efile this form using OTHER FILINGS \rightarrow OTHER DOCUMENTS \rightarrow APPLICATION FOR REFUND.

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ecfhelpdesk@cand.uscourts.gov Monday -Friday 9:00 a.m.-4:00 p.m View detailed instructions at: cand.uscourts.gov/ecf/payments. For assistance, contact the ECF Help Desk at 1-866-638-7829 or

FOR U.S. DISTRICT COURT USE ONLY	URT USE ONLY
Refund request: Approved Denied	
Keruna request: Denied — Resubmit amended application (see reason for denial)	e reason for denial)
Approval/denial date:	Request approved/denied by:
Pay gov refund tracking ID refunded:	Agency refund tracking ID number: 0971-
Date refund processed:	Refund processed by:
Reason for denial (if applicable):	
Referred for OSC date (if applicable):	

Northern District of California

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Page 1 of 2

UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

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UNITED STATES OF AMERICA

No. CR 20-00371 WHA

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ROBERT T. BROCKMAN

Defendant.

OF VENUE ON COUNTS TWO THROUGH EIGHT

alternative, he moves for a bill of particulars relating to venue. For the foregoing reasons, the U.S.C. Section 3237(b) and Federal Rules of Criminal Procedure 7(c)(1) and (f). Defendant has moved for change of venue as to counts two through eight under 18 In the

completed" his alleged crimes. Section 7201. Venue is proper in a jurisdiction in which defendant "began, continued, or Counts two through eight of the indictment allege tax evasion, in violation of 18 U.S 18 U.S.C. § 3237(a). Section 3237(b) provides, however:

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motion is **DENIED**

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district in which he was residing at the time the alleged offense was committed. 18 other than the judicial district in which the defendant resides, [defendant] may upon mailing to the Internal Revenue Service, and prosecution is begun in a judicial district where venue for prosecution of an offense described in section . . . is based solely on a U.S.C.A. § 3237(b) (emphasis added). motion filed in the district in which the prosecution is begun, elect to be tried in the

"solely" on the mailing of tax return(s) to the Northern District of California. It does not. The Relief from Section 3237(b) is available to defendant only if the government claims venue

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Case 4:21-cr-00009 Document 1-3 Filed on 01/04/21 in TXSD Page 3 of 771

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United States District Court

Northern District of California

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location to which a tax return was mailed, the motion is **DENIED**.

Defendant may challenge

Since Section 3237(b) addresses scenarios in which venue is only established through the

investments made up the unreported income referenced in counts two through eight (Ind. ¶¶ 8

It also alleges that the proceeds of Vista-managed

indictment alleges that the defendant used Vista Equity Partners, "a private equity firm which

was founded in March 2000 . . . and which maintained its principle place of business in San

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Francisco," to manage his investments.

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128–134).

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venue on other grounds.

Procedure 7(f). A bill of particulars: Defendant also seeks a bill of particulars pursuant to Federal Rules of Criminal

sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of has three functions: 'to inform the defendant of the nature of the charge against him with

another prosecution for the same offense when the indictment itself is too vague, and surprise at the time of trial, and to enable him to plead his acquittal or conviction in bar of

indefinite for such purposes

United States v. Giese, 597 F.2d 1170, 1180 (9th Cir. 1979), quoting United States v. Birmley,

as stated in the indictment, fall short. The indictment clearly states that Vista Equity Partners

529 F.2d 103, 108 (6th Cir. 1976). Defendant argues that the government's grounds for venue.

maintained its headquarters in San Francisco. This suffices to enable defendant to prepare for

trial as well as pretrial motions (Ind. ¶¶ 1-134). The request for a bill of particulars is **DENIED**

IT IS SO ORDERED.

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Dated: December 2, 2020

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1b. ATTORNEY Neal Sto	NAME (if different ephens)		^{2b.} ATTORNEY (650) 73 9		BER					AIL ADDRES		ay.com	า	
1755 Emba	DRESS (INCLUDE I arcadero Road California 943)	d	AME, IF APPLICABLE)			SE NAME ited Stae	es v. Bro	ckman					6. CASE 1	NUMBER - cr-00 3	371
7. COURT REPO		R FTR, LEAVE	EBLANK AND CHECK BOX	K)→ ☐ FTR	☐ AP	S TRANSCRIF PEAL N-APPEAL	OT ORDER IS CRIMINA CIVIL	L 🗇 In			TE: Court o		nscripts m	ust be atta	ached)
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Save as new PDF

CAND Pay.gov Application for Refund (rev. 10/19)

NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT

APPLICATION FOR REFUND (USDC-CAND PAY.GOV)

PAY.GOV TRANSACTION DETAILS

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- Complete all required fields (shown in red*); otherwise, your request may be denied and require resubmission.
- In fields 3-6, enter the information for the incorrect transaction (the one for which you are requesting a refund), not the correct transaction that appears on the docket. This information can be found in the Pay.gov screen receipt or confirmation email.

_	1.	I. Your Name: * Jacqueline Peters	-	7. Your Phone Number: (650) 739-3982	(650) 739-3982
	2.	2. Your Email Address: * jpeters@jonesday.com	2jonesday.com	8. Full Case Number (if applicable):	applicable): 3:20-cr-00371
11000	3.	3. Receipt Number:*	0971-15180351		Attorney Admission
	4.	4. Transaction Date:*	12/01/2020		Civil Case Filing FTR Audio Recording
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55,000		For a duplicate charge, provide the correct receipt number in this field	correct receipt number in	his field.	
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	you.				

Case 4:21-cr-00009 Document 1-3 Filed on 01/04/21 in TXSD Page 5 of 771

Efile this form using Other Filings ightarrow Other Documents ightarrow Application for Refund.

ecfhelpdesk@cand.uscourts.gov Monday -Friday 9:00 a.m.-4:00 p.m View detailed instructions at: cand.uscourts.gov/ecf/payments. For assistance, contact the ECF Help Desk at 1-866-638-7829 or

FOR U.S. DISTRICT COURT USE ONLY	URT USE ONLY		
☐ Approved			
Refund request: Denied — Resultmit amended application (see	e reason for denial)		
Denied — Resubmit amended application (see reason for denial)	e reason for denial)		
Approval/denial date: 12/1/2020	Request approved/denied by: Ana P Banares	Ana P Banares	
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Date refund processed:	Refund processed by:		
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1b. ATTORNEY Michael	NAME (if different Pitman	:)	1	2b. ATTORNEY PHO (408) 53		•		į	3. ATTORNEY michael			j.gov		
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	CA 95113			Đ	8. THIS TE	RANSCRIPT O	RDER IS FOR:							
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DATE	JUDGE (initials)	TYPE (e.g. CMC)	PORTION If requesting less than full hear specify portion (e.g. witness or ti	PDF ing, (email) me)	TEXT/ASCII (email)	PAPER	CONDENSED (email)	ECF ACCESS (web)	ORDINARY (30-day)	14-Day	EXPEDITED (7-day)	DAILY (Next day)	HOURLY (2 hrs)	REALTIME
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ORDER & CERT	TIFICATION (11. &	12.) By signi	ng below, I certify that I w	ill pay all charges (d	deposit plus	additional).				12	. DATE			
11. SIGNATURI	= /s/									12	2/02/202	0		
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INSTRUCTIONS

CAND 435 (Rev. 02/2015)

Use this form to order the transcription of proceedings. *CJA counsel should use Form CJA24*. Before completing this form, please visit <u>cand.uscourts.gov/transcripts</u> for complete transcript ordering information. These Instructions supplement the Website Information.

- 1. Complete a separate order form for each case number for which transcripts are ordered.
- 2. Complete a separate order form for each court reporter who reported proceedings in the case.
- 3. Complete Items 1-12. Keep a copy of your completed order form for your records.
- 4. E-file this form in the U.S. District Court CM/ECF system. *Exceptions to e-filing*: (a) sealed cases/proceedings; (b) non-parties; (c) pro se parties who are not e-filers. In such cases, mail or hand-deliver a hard copy addressed to the court reporter c/o the Clerk's Office at the Court division where the proceeding was held.
- 5. Email the court reporter (email list available at <u>cand.uscourts.gov/courtreportercontact</u>) promptly after this Transcript Order Form is e-filed to obtain the amount of the required deposit. Deliver payment to the court reporter promptly. Upon receipt of the deposit, the court reporter will begin work on the transcript. *Exceptions:* (a) orders for FTR transcripts and (b) daily trial transcript orders.
- 6. Unless prepayment is waived, delivery time is computed from the date the court reporter receives the deposit, authorized CJA 24 Form, authorization from Federal Public Defender's Office or, for transcripts ordered by the U.S. government, from the date of receipt of the DCN number.
- 7. The deposit fee is an estimate. Any overage will be refunded; any shortage will be due from you.

ITEM-BY-ITEM INSTRUCTIONS (ITEMS 1-12):

- Items 1-3 In fields 1a, 2a & 3a, please provide the contact name and information for the person responsible for ordering the transcript. In a law office, this is usually a paralegal or administrative assistant, not the attorney. In fields 1b, 2b & 3b, provide the attorney name and contact info, if the attorney is not the contact person.
- Items 5-6. Only one case number may be listed per order.
- Item 7. Visit <u>cand.uscourts.gov/transcripts</u> for instructions for determining the name of the court reporter who reported the proceeding or if the proceeding was audiorecorded. If minutes have not been filed, contact judge's courtroom deputy.
- Item 8. Check appeal OR non-appeal AND criminal OR civil. *In forma pauperis*: a court order specifically authorizing transcripts is required before transcripts may be ordered *in forma pauperis*.
- Item 9a. List specific date(s) of the proceedings for which transcript is requested. A transcript of only a portion of a proceeding may be ordered, if the description is clearly written to facilitate processing. Under "type," indicate briefly what type of proceeding it was, such as "motion," "sentencing," or "CMC."
- :em 9b. Select desired **FORMAT(S)** for transcript. There is an additional charge for each format ordered. Visit <u>cand.uscourts.gov/transcriptrates</u> for details. Unlock ECF/web access is included at no extra charge with each of the other formats.
- Item 9c. There are 6 **DELIVERY TYPES** to choose from (times are computed from date of receipt of the deposit fee or DCN number). **NOTE**: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within 7 calendar days, the 14-day *delivery* rate would be charged.

TRANSCRIPT DELIVERY TIMES:

ORDINARY — 30 calendar days.

14-Day — 14 calendar days.

EXPEDITED — 7 calendar days.

DAILY (NEXT DAY) — Following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day. HOURLY (SAME DAY) — within two (2) hours.

REALTIME — A draft unedited, uncertified transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings or immediately following adjournment.

- Item 11. Sign in this space to certify that you will pay all charges (the deposit plus any additional charges.) An electronic or conformed (/s/) signature is acceptable.
- Item 12. Enter the date of signing the order and certification.

21 20 10 19 18 17 16 15 13 12 11 14 9 S S ∞ 7 6 4 2 Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) CHRISTOPHER M. MAGNANI (Maryland) Attorneys for the United States of America Trial Attorneys COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < Plaintiff. Defendant. AMERICA NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-cr-00371-WHA

Case 3:20-cr-00371-WHA

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Filed 12/03/20

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of 3

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defendant Robert T. Brockman, that time be excluded under the Speedy Trial Act from December It is hereby stipulated by and between counsel for the United States and counsel for the

At the hearing held on December 1, 2020, the government and counsel for the defendant agreed

2020 through December 15, 2020

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27 26 that time be excluded under the Speedy Trial Act because of the complexity of the case, because of

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discovery to be produced. pending motions, and so that defense counsel could continue to prepare, including by reviewing the STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA For this reason and as further stated on the record at the hearing, the parties

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 ω 4 2 speedy trial. 18 U.S.C. §§ 3161(h)(1)(D), (h)(7)(A), (h) (7)(B)(ii), (h)(7)(B)(iv) computation under the Speedy Trial Act outweigh the best interests of the public and the defendant in a stipulate and agree to exclude time until December 15, 2020, and further stipulate and agree that the ends of justice served by excluding the time from December 1, 2020 through December 15, 2020 from

6 S counsel for the defendant to file this stipulation and proposed order. The undersigned Assistant United States Attorney certifies that he has obtained approval from

IT IS SO STIPULATED

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DAVID L. ANDERSON United States Attorney

s/ Michael G. Pitman
COREY J. SMITH
Senior Litigation Counsel

Attorneys for United States of America

Assistant United States Attorney

MICHAEL G. PITMAN

s/ Neal J. Stephens
NEAL J. STEPHENS
Counsel for Defendant ROBERT T. BROCKMAN

[PROPOSED] ORDER

that the ends of justice served by excluding the time from December 1, 2020 to December 15, 2020 from prepare, including by reviewing the discovery to be produced, taking into account the exercise of due complexity of the case, because of pending motions, and so that defense counsel could continue diligence. from December 1, 2020through December 15, 2020 under the Speedy Trial Act because of the Court on December 1, 2020 and for good cause shown, the Court finds that time should be excluded Based upon the facts set forth in the stipulation of the parties and the representations made to the 18 U.S.C. §§ 3161(h)(1)(D), (h)(7)(A), (h) (7)(B)(ii), (h)(7)(B)(iv). The Court further finds

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Case 3:20-cr-00371-WHA Document 59 Filed 12/03/20 Page 3 of 3

speedy trial. computation under the Speedy Trial Act outweigh the best interests of the public and the defendant in a Speedy Trial Act. from December 1, 2020 through December 15, 2020 shall be excluded from computation under the Therefore, and with the consent of the parties, IT IS HEREBY ORDERED that the time

DATED: ___

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IT IS SO ORDERED.

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WILLIAM ALSUP
United States District Judge

STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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21 20 19 18 17 16 15 13 12 1 10 14 9 S S ∞ 7 6 4 2 Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) CHRISTOPHER M. MAGNANI (Maryland) Attorneys for the United States of America Trial Attorneys COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF AMERICA 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < Plaintiff. Defendant. NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-cr-00371-WHA

Case 3:20-cr-00371-WHA

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of 3

STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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discovery to be produced.

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For this reason and as further stated on the record at the hearing, the parties

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At the hearing held on December 1, 2020, the government and counsel for the defendant agreed

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2020 through December 15, 2020

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defendant Robert T. Brockman, that time be excluded under the Speedy Trial Act from December

It is hereby stipulated by and between counsel for the United States and counsel for the

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6 S counsel for the defendant to file this stipulation and proposed order. The undersigned Assistant United States Attorney certifies that he has obtained approval from

IT IS SO STIPULATED

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DAVID L. ANDERSON United States Attorney

s/ Michael G. Pitman
COREY J. SMITH
Senior Litigation Counsel
MICHAEL G. PITMAN

Attorneys for United States of America

Assistant United States Attorney

<u>s/ Neal J. Stephens</u> NEAL J. STEPHENS Counsel for Defendant ROBERT T. BROCKMAN

[PROPOSED] ORDER

that the ends of justice served by excluding the time from December 1, 2020 to December 15, 2020 from diligence. prepare, including by reviewing the discovery to be produced, taking into account the exercise of due complexity of the case, because of pending motions, and so that defense counsel could continue from December 1, 2020through December 15, 2020 under the Speedy Trial Act because of the Court on December 1, 2020 and for good cause shown, the Court finds that time should be excluded Based upon the facts set forth in the stipulation of the parties and the representations made to the 18 U.S.C. §§ 3161(h)(1)(D), (h)(7)(A), (h) (7)(B)(ii), (h)(7)(B)(iv). The Court further finds

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Case 3:20-cr-00371-WHA

Document 60

Filed 12/04/20

Page 3 of 3

from December 1, 2020 through December 15, 2020 shall be excluded from computation under the

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Speedy Trial Act.

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IT IS SO ORDERED.

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DATED: December 4, 2020



STIPULATION TO EXCLUDE TIME FROM DECEMBER 1, 2020 THROUGH DECEMBER 15, 2020 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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1b. ATTORNEY Daniel V	NAME (if different . Dorris)		2b. ATTORNE' (202) 32								AIL ADDRES elloggh		.com		
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CAND 435 (Rev. 08/2018)

INSTRUCTIONS

Use this form to order the transcription of a record of proceedings. *CJA counsel should use Form CJA24.* Before completing this form, please visit <u>cand.uscourts.gov/transcripts</u> for complete transcript ordering information. THESE INSTRUCTIONS SUPPLEMENT THE WEBSITE INFORMATION.

- 1. Complete a separate order form for each case number for which transcripts are ordered.
- 2. Complete a separate order form for each court reporter who reported proceedings in the case.
- 3. Complete Items 1-12. Keep a copy of your completed order form for your records.
- 4. E-file this form in the U.S. District Court CM/ECF system. *Exceptions to e-filing*. (a) sealed cases/proceedings; (b) non-parties; (c) pro se parties who are not e-filers. In such cases, mail or hand-deliver a hard copy addressed to the court reporter supervisor (email list available at cand.uscourts.gov/transcripts/contact) at the Court division where the proceeding was held.
- 5. Next, the court reporter/transcriber will contact you to confirm estimated costs and delivery options. Deliver payment to the court reporter/transcriber promptly. Upon receipt of the deposit, the court reporter/transcriber will begin work on the transcript.
- 6. Unless prepayment is waived, delivery time is computed from the date the court reporter/transcriber receives the deposit, authorized CJA 24 Form, authorization from Federal Public Defender's Office or, for transcripts ordered by the U.S. government, from the date of receipt of the DCN number.
- 7. The deposit fee is an estimate. Any overage will be refunded; any shortage will be due from you.

ITEM-BY-ITEM INSTRUCTIONS (ITEMS 1-12):

- Items 1-3 In fields 1a, 2a & 3a, please provide the contact name and information for the person responsible for ordering the transcript. In a law office, this is usually a paralegal or administrative assistant, not the attorney. In fields 1b, 2b & 3b, provide the attorney name and contact info, if the attorney is not the contact person.
- Items 5-6. Only one case number may be listed per order.
- Item 7. Visit <u>cand.uscourts.gov/transcripts</u> for instructions for determining the name of the court reporter who reported the proceeding or if the proceeding was audio-recorded. If minutes have not been filed, contact the court reporter supervisor at the division where the hearing was held.
- Item 8. Check appeal OR non-appeal AND criminal OR civil. *In forma pauperis*: a court order specifically authorizing transcripts is required before transcripts may be ordered *in forma pauperis*.
- Item 9a. List specific date(s) of the proceedings for which transcript is requested. A transcript of only a portion of a proceeding may be ordered, if the description is clearly written to facilitate processing. Under "type," indicate briefly what type of proceeding it was, such as "motion," "sentencing," or "CMC."
- Item 9b. Select desired FORMAT(S) for transcript. There is an additional charge for each format ordered. Visit cand.uscourts.gov/transcripts/rates for details. Unlock ECF/web access is included at no extra charge with each of the other formats.
- Item 9c. There are 7 **DELIVERY TYPES** to choose from (times are computed from date of receipt of the deposit fee or DCN number). **NOTE**: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within 7 calendar days, the 14-day *delivery* rate would be charged.

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- ORDINARY 30 calendar days.
- 14-Day 14 calendar days.
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- Hourly (SAME DAY) within two (2) hours.
- REALTIME A draft unedited, uncertified transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings or immediately following adjournment.
- Item 11. Sign in this space to certify that you will pay all charges (the deposit plus any additional charges.) An electronic or conformed (/s/) signature is acceptable.
- Item 12. Enter the date of signing the order and certification.

21 20 19 18 17 16 15 13 12 1 10 14 9 S S ∞ 7 6 4 2 Trial Attorneys Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) CHRISTOPHER M. MAGNANI (Maryland) Attorneys for the United States of America COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF AMERICA 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < Plaintiff. Defendant. NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION Time: Date: DEFENDANT'S MOTION TO DISMISS, IN PART, AND TO TRANSFER VENUE UNITED STATES' OPPOSITION TO Case No.: 3:20-cr-00371-WHA December 15, 2020 12:00 PM

Case 3:20-cr-00371-WHA

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25 24 23 22 . "Motion"). and to Transfer to the Southern District of Texas, filed on November 30, 2020 (ECF No. 49) (the Every Count of the Indictment is Properly Venued in the Northern District of California The United States respectfully opposes Defendant's Motion to Dismiss in Part for Lack of Venue

28 27 26 U.S. district in which the crime was committed. Const. art. III, § Criminal defendants have a Constitutional right to be tried in, and by a jury drawn from, a 2, cl. . 3; U.S. Const. amend. VI); United States v. Ruelas-Arreguin, 219 F.3d 1056, See United States v. Cabrales, 524 U.S. 1, 6 (1998) (citing

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schemes comprised of crimes committed in the Northern District of California. government bears the burden of proving venue, by a preponderance of the evidence, at trial. government generally "must prosecute an offense in a district where the offense was committed." venue is States v. 1060 (9th Cir. 2000). Rule 18 of the Federal Rules of Criminal Procedure similarly provides that the (9th Cir. 1996) (citing United States v. Kaytso, 868 F.2d 1020, 1021 (9th Cir. 1988)). Generally 18 U.S.C. proper in any judicial district in which a criminal offense was begun, continued, Trenary, 473 F.2d 680, 682 (9th Cir. 1973); see also United States v. Jensen, 93 F.3d 667, 669 § 3237(a); Ruelas-Arreguin, 219 F.3d at 1061. In this case, the Indictment covers several 20 completed See United The

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A <u> Defendant's Conspiracy & Tax Evasion Scheme - Counts I through 8:</u>

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committed an overt act. See United States v. Ahumada-Avalos, Spies v. conduct undertaken with a tax evasion motive can be an affirmative act of evasion, including directing or completed, see United States v. Strawberry, 892 F. Supp. 519, 521 (S.D.N.Y. 1995) (citing United evasion is properly venued in any district in which an affirmative act of evasion was begun, continued, "in any district in which such offense was begun, continued, or completed." 1967)). Conspiracy is properly venued in any district in which one member of the conspiracy funds to nominee accounts. See United States v. Carlson, 235 F.3d 466, 468-69 (9th Cir. 2000) (citing States v. United States v. Meyers, 847 F.2d 1408, 1411 (9th Cir. 1988). Tax evasion and conspiracy are both continuing offenses United States, 317 U.S. 492, 499 (1943); Edwards v. United States, 375 F.2d 862, 866 (9th Cir Slutsky, 487 F.2d 832, 839 (2d Cir. 1973)), and any potentially misleading or concealing 875 F.2d 681, 682-83 (9th Cir. for venue purposes, and venue is proper 18 U.S.C. § 3237(a).

allowed Defendant to conceal his income and assets, and this component was necessarily largely offshore structure. offshore. component was a complex network of offshore entities, nominees, and secret foreign accounts, which Defendant's tax evasion and conspiracy scheme was a machine built of two components. The other component was an investment vehicle through which Defendant secretly funded his That vehicle was Vista Equity Partners One

collaboration between Defendant and Individual Two, and Defendant was the sole investor in Vista's first private equity Vista is a private equity firm. It was founded in San Francisco in 2000 as the result of fund. From the very beginning and throughout the entire conspiracy, Defendant

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income tax he owed on any profits. worked with his co-conspirators to ensure that his investments in Vista funds would be illegally concealed using nominee entities including Point Investments, and that Defendant could thus evade (through Point) in several Vista funds, yielding gains Defendant (or anyone else) reported as income Over the following two decades, Defendant made investments of approximately \$2 billion, none of which the

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after it was founded, Vista's core finance and accounting functions have always been located in the distribution notices, and prepare wire instructions (some of which were sent to banks investment matured, the scheme required Vista to sell the investment, calculate the waterfall, issue to conspiracy and tax evasion flowed through Vista's offices in the Northern District (in San Francisco, and, beginning in 2016, also in Oakland). Thus, Defendant's functions described above. Defendant invested (and he invested in many of them), and local Vista employees offshore structure. District) based on instructions received from Defendant's nominees to move money into Defendant's It required Defendant to make commitments to Vista funds, fund those capital calls, and Vista to receive, invest, and account for Defendant's capital. The scheme involved All of these steps were repeated several times for each Vista fund in which the Although it began opening offices outside the Northern District a decade continuous contacts with Vista employees located in the Northern District. Vista to call capital as required, Defendant Northern District performed each of the in the Northern

was location, Motion at 13, that the Indictment's references to Vista personnel have nothing to do with suggestions that the Indictment makes no reference to conduct that took place at Vista's and the scheme could not have existed but for contacts with the Northern District been located in the Northern District since 2011, Motion at 6 activity in the Northern District, Motion at 6, and that relevant Vista functions and employees have not evasion machine, was more going to be located in the Northern District. In essence, Defendant decided to build a complex, tax More fundamentally, when he began his scheme in 1999, Defendant was well aware that Vista integral to and he made the conscious choice to put the engine in San Francisco. Defendant's tax evasion and conspiracy than the Northern District of California, & 10, are all wrong. ln fact, The Motion's San Francisco district

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B. <u>Defendant's FBAR Violations - Counts 9 through 14:</u>

20 10 19 18 17 16 15 14 13 12 1 9 S 4 S ∞ 7 6 2 period." office" in any district, so long as constitutional safeguards are not violated. In United States v. Bradley, 644 report is to be filed." Id. at 1252. Because the FBAR form in question allowed filing in "any local purposes, the crime of failing to file a required report is "committed in the district or districts where prepared rather than the district where he lived, the court noted that, for Sixth Amendment venue defendant's claim that the prosecution was improperly venued in the district where his tax returns anticipates bearing the burden of proving at trial that funds tainted by those crimes moved through charge Defendant with aggravated FBAR felonies in violation of 31 U.S.C. indictment." Government may choose, from among those districts, one where it is most convenient to pursue houses a local IRS office. Northern District, the FBAR Counts, which will require proof of those crimes, are properly venued here Defendant's secret foreign accounts. Because Defendant's tax evasion and conspiracy occurred in the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month 5322(b) includes enhanced penalties for failing to file an FBAR "while violating another law of the .3d 1213 (11th Cir. 2011), the defendant was prosecuted for failing to file an FBAR. In evaluating the of the IRS, "for purposes of venue, the form is 'required' to be filed in any and every district that Venue would be proper for the FBAR Counts regardless because FBAR charges can be The FBAR Counts do not merely charge Defendant with failing to file FBARs. Here, Bradley, 644 F.3d at 1252-53. "Presumably, the Government may choose any district that the illegal activity at issue is So long as its choice does not create a constitutional hardship, the Defendant's tax evasion and conspiracy, and the §§ 5314 & 5322(b). Section Rather, they government brought were

that its ruling could permit nationwide venue for FBAR prosecutions, but seemed unfazed by the possibility burdened - venue was proper in Maryland under the Sixth Amendment. FBARs could be tax returns were prepared, although he lived in Virginia. prosecuted for failing to file an FBAR. Similarly, in United States v. Clines, 958 F.2d 578 (4th Cir. 1992), the defendant was also (unless the filed in any local office of the IRS, and because the defendant was not unfairly government engaged in forum shopping). The prosecution was venued in Maryland, where the defendant's Id. at 583-84. The court found that -*Id.* at 584 n.3 Id.The court also recognized because

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would not be unfair to the defendant or create a hardship." Id. at 1252 n.82

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change should affect the analysis is based on non-binding authority interpreting a different statute 2013,before. But beginning on July 1, 2013, FBARs had to be filed electronically, and not in any office of the IRS FBAR forms could be filed in any IRS office, and this fact is cited in both Bradley and Clines. It is true that the rules for filing FBARs changed after Bradley and Clines were decided. Now FBARs can be filed electronically from anywhere. The Motion's argument that this

undue hardship to Defendant. Accordingly, the FBAR Counts should not be dismissed under Federal because the Defendant committed aggravated FBAR felonies here, because the FBAR Counts were not opportunity brought here as an exercise in forum shopping, and because trying them here will create no unfairness Rule of Criminal Procedure 12(b)(3)(A)(i), or transferred under Rule 21(b). Defendant will have Litigating the FBAR Counts in the Northern District would not offend the Sixth Amendment to hold the government to its burden of establishing venue at trial.

CDefendant's Fraud & Money Laundering Scheme -Counts 15

places where any part was accomplished." Money laundering Wire fraud is a "continuing offense" IS also a continuing offense for venue purposes, see United States v. Angotti, 105 F.3d United States v. for venue purposes, and is properly venued "in all of the Pace, 314 F.3d 344, 350 (9th Cir. 2002)

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that district to the district where the financial or monetary transaction is conducted." brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from 539, 544-45 (9th Cir. 1997), and is triable in "any district in which the financial or monetary transaction is transfer out of, the Northern District. Defendant's fraud and money laundering scheme was facilitated by multiple emails into, and a wire conducted;" or "any district where a prosecution for the underlying specified unlawful activity could be Nothing more is required, and the Motion does not argue otherwise 18 U.S.C. § 1956(i)

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D. Defendant's Obstruction of Justice Scheme - Counts 38 & 39:

jury investigation he sought to obstruct was conducted by a Northern District Grand Jury, Defendant's the scheme to obstruct justice is properly venued here (whether or not pending or about to be instituted) was intended to be affected or in the district in which conduct constituting the alleged offense occurred." Prosecution under Section 1512 "may be brought in the district in which the official proceeding 18 U.S.C. ∞ 1512(i). Because the federal grand

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Ħ. The Platt Factors Overwhelming Weigh Against Transfer Pursuant to Rule 21

Justice." trial court's decision not to transfer." United States v. Shayota, 15-CR-00264-LHK, 2015 WL ruling on a motion for change of venue, [and only] in rare instances have appellate courts overridden Napoli, 10-CR-00642-CRB, 2011 WL 1303571, at *1 (N.D. Cal. Apr. 5, 2011) (Breyer, J.) (citing to (unpublished)). 9311922, at *1 (N.D. Cal. Dec. 23 2015) (Koh, J.) (quoting United States v. Sherwood, 98 F.3d 402, defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant District of Texas under Federal Rule of Criminal Procedure 21(b). Rule 21(b) provides that, "[u]pon the (9th Cir. 1996); United States v. Testa, 548 F.2d 847, 856 (9th Cir. 1977)). "A district court has broad discretion in another district for the convenience of the parties, any victim, and the witnesses, and in the interest of The Motion argues that this prosecution should be moved, in whole or in part, to the Southern "[T]he Defendant bears the burden of showing why transfer is warranted." United States v. Ward, 878 F.2d 387, 1989 WL 69897, at *1 (9th Cir. 1989) United States

case in Platt v. Minnesota Mining & Manufacturing Co., 376 U.S. 240 (1964): (1) location of corporate defendant; The Supreme Court enumerated ten factors to be considered when deciding whether to transfer a (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of

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documents and records likely to be involved; (5) disruption of defendant's business unless the case is might affect the transfer. Id. at 243-44. These factors have been adapted to non-corporate defendants transferred; (6) expense to the parties; (7) location of counsel; (8) relative accessibility of place of trial; 1990) (citing United States v. Stephenson, 895 F.2d 867, 875 (2d Cir. 1990)) relative importance of the factors. 2005) (Alsup, J.). (9) docket condition of each district or division involved; and (10) any other special elements which See United States v. Fritts, 05-CR-00216-WHA, 2005 WL 3299834, at *2 (N.D. Cal. Dec. 6) No single *Platt* factor is determinative. See United States v. Maldonado-Rivera, 922 Courts try to strike a F.2d 934, 966 (2d Cir. balance based on the as

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These factors apply, in this matter, as follows:

Factor 1 - Location of Defendant

evidence indicate Defendant visited the following destinations not particularly tethered to the Southern District of Texas. While it is true that Defendant can be said to reside more in Houston than anywhere else, In 2019, alone, private jet records and other

- Houston, Texas
- Fort Lauderdale, Florida
- San Francisco, California

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- Nassau, Bahamas
- Aspen, Colorado (for a routine, annual three-month trip to a vacation home for the summer)
- Anchorage, Alaska (for a routine, annual fishing trip)
- Washington, DC

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- Cordoba, Argentina (for a routine, annual hunting trip)
- Salt Lake City, Utah
- Dayton, Ohio

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- This travel history is difficult to square with the Motion's suggestion that the trip from Houston to San
- Francisco for trial would be a hardship. The majority of pretrial proceedings in this matter are likely to
- be conducted remotely, and will probably not require Defendant (or anyone else) to travel. See Napoli
- essential court appearances, the time and 2011 WL 1303571, at *1 ("[B]ecause the Court has waived Defendant Napoli's presence at all nonfinancial burden on him has been mitigated."). If he is capable

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of traveling great distances burden with respect to this factor. vacation, then he is capable of traveling to the to hunt and fish, and to stay away from home Northern District for trial. for months at a time Defendant has not carried his

Factor 2 - Location of Possible Witnesses

in the Southern District of New York.") (citing United States v. Spy Factory, Inc., 951 F. Supp. 450, not weigh in favor of transfer."). any witnesses it calls who reside outside the New unable to testify in this District or even that they would be significantly inconvenienced by such 456-57 (S.D.N.Y. 1997) (Sotomayor, J.)); United States v. Calk, 19-CR-366-LGS, 2020 WL 703391, must specifically describe how particular witnesses would be entirely prevented from testifying at trial demonstrate that transfer was warranted."); see also United States v. Blakstad, 19-CR-486-ER, moving Defendants have not specified to what their witnesses will testify and how these witnesses alone, is sufficient to tip this factor against transfer. See, e.g., Shayota, 2015 WL 9311922, at *1 ("[T]he any such witness would be unwilling or unable to travel to the Northern District for trial. testimony, and the Government represents that it will pay or reimburse the travel and lodging costs 5992347, at *4 (S.D.N.Y. Oct. 9, 2020) ("As the burden of justifying a transfer rests on Blakstad, essential to the resolution of this case. The Ninth Circuit addressed a similar situation in *United States v* (S.D.N.Y Feb. 12, 2020) ("Defendant does not allege that any of the prospective witnesses will be 548 The Motion does not identify a single defense trial witness from Houston, much less allege that F.2d 847, 857 (9th Cir. 1977) . . . [and] determined that the defendant had York area. Based on this information, this factor does failed This failure. 2020 he

requires the Court consider the convenience of victims, see United States v. Larsen, 13-CR-688-JMF compensated experts at the expense victims and third-party witnesses would be perverse and possible as many as three, local Vista facts witnesses at trial. witness from each of the victim entities at trial. 2014 WL 177411, at *2 n.2 (S.D.N.Y. Jan. 16, 2016), and the government expects to call at least one One and Entity Two in the Indictment - in the Northern District. Conversely, the Motion glosses over the fact that there are at least two victim entities In addition, the government expects Moving the case to convenience Rule 21(b), as amended in 2010 to call at **Entity**

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10 13 12 1 9 ω ∞ 7 6 S 4 2 investigation in the Northern District by late 2018 when Individual One, Defendant's primary offshore investigation into his conduct, there can be no doubt that Defendant knew that he was the target of an around this time that Defendant first began to complain of the amorphous malaise described in the to nominee, began cooperating with the government. See Immunity Letter dated October 2, 2018, attached pretrial proceeding initiated by Defendant, and not at trial, such consideration would not change the appropriate to consider the location of these witnesses although they are likely to be witnesses to Motion. knew or should have known in June 2016 that it was likely there would be a federal S Ms. Keneally's Declaration in support of the Motion (ECF call at his anticipated competency motion, including several expert witnesses. ("I conducted a complete physical examination of Mr. Brockman on December 11, 2018."). Although the Indictment alleges, and the government expects to prove at trial, that Defendant The Motion does identify, and relies heavily upon, the location of witnesses Defendant expects See Declaration of James L. Pool M.D., attached to Ms. Keneally's Declaration as Exhibit No. 49-1) as Exhibit E. Even if it is grand jury Apparently, it m

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is wrong: Witnesses and experts regularly appear remotely at competency hearings. Defendant may any patient should select their physicians based on criteria of their own choosing. hearing, but it would be odd bootstrapping to allow that tactic to weigh heavily in seek to force his own experts, wife, friends, and colleagues to appear in-person at any competency Defendant's anticipated competency hearing must be conducted entirely in-person, Motion at 12 prosecution to move to Houston as a result. Moreover, to the extent the Motion suggests that hire exclusively Houston-based medical professionals, Defendant should not be permitted to force Medicine in Houston (an institution Defendant has endowed with tens of millions of dollars). medical professionals upon whom he relies exclusively from one institution, the Baylor College of that there are renowned medical institutions within the Northern District, Defendant elected to draw Although he knew he was under investigation by authorities in the Northern District, and despite the But having elected to favor of transfer Naturally, Ħ

Location of Events Likely to be in Issue

itself, in attempting to tally the locus of events described in the Indictment, identifies only two tied to the Southern District of Texas than to the Northern District, Motion at 2, is curious, since the Motion The Motion's suggestion that the central events described in the Indictment are more closely tied

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simply omits events which occurred in the Northern District. now implicitly waived any objection to venue in the Southern District of Texas, see United States of gravity for this case is not in the Northern District not support transfer. The Motion's argument to the contrary, Motion at 7, is based on its tally which Aronoff, 463 F. Supp. 454, 457 n.2 (S.D.N.Y. 1978), but it certainly indicates that this Platt factor does Houston. See Motion at 7. balancing test with weight on only one side of the scale to reach its erroneous conclusion that the center Southern District of Texas. In fact, venue for several Counts in the Indictment could fail completely in That failure technically does not preclude transfer, since Defendant has It is telling that the Motion must resort to

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<u> Factor 4 - Location of Documents and Records Likely to be Involved</u>

electronically accessible, which weighs against transfer. See Shayota, 2015 WL 9311922, at *3 The relevant documents and records are either already in the Northern District or are

Factor 5 - Disruption of Defendant's Business

incompetence defense), Defendant claims to now be retired. This factor does not favor transfer the Indictment became public, and almost two years after he began to lay the foundations for his Although he was the CEO of a multi-billion company until November 2020 (a few weeks after

Factor 6 - Expense to the Parties

Transferring only a portion of this case would be enormously expensive.

Although the

which would delay the ultimate resolution of this matter until the trailing case was complete. trials in different districts, dramatically increasing the expense to the parties, witnesses, and courts transferring only some of them, even just the FBAR Counts, would necessitate two largely overlapping tax evasion, FBAR, fraud, and money laundering Counts. instance, Defendant's relationship with Individual One is significant to every Count in the Indictment transfer in cases where transfer would result in duplicative trials, and other circuit courts result to be avoided. Additionally, since both trials would have evidence in common, they could not proceed simultaneously, Eugene Brockman Charitable Trust, Spanish Steps, and Point Investments, is crucial to the conspiracy, Similarly, Defendant's relationship with and control over multiple offshore entities, including the Indictment covers a broad swath of criminal conduct, the various Counts share common evidence. See Shayota, 2015 WL 9311922, at *4 ("The Ninth Circuit has discouraged Effectively severing the Counts by For

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particularly inefficient. significant efficiency gained by having one trial (or even several) in one location rather than two."). accord."); see also Napoli, 2011 WL 1303571, at *2 ("The best reasons for denying transfer concern the While there is no basis for transferring this case in its entirety, transferring only part of it would be

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Factor 7 - Location of Counsel

is not a fungible local counsel, but rather has been actively involved in this matter (the investigation of which was conducted exclusively by a Northern District Grand Jury) since 2016. Houston, while three (Messrs. Stephens, Doctor, and Pitman) are based in the Northern District carried his burden with respect to this factor Although three of the four prosecutors are based in Washington, DC, the other one is a local AUSA who Of the attorneys who have entered appearances in this matter, only one (Mr. Defendant has not Varnado) is based in

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Factor 8 - Relative Accessibility of Place of Trial

WL 1303571, at *2. The Northern District is easily accessible. See Shayota, 2015 WL 9311922, at *6; Napoli, 2011

Factor 9 - Docket Conditions

Shayota, 2015 WL 9311922, at *5. Additionally, given the progress that has already been made in the can be accommodated by the Northern District, this factor does not weigh in favor of transfer. District of Texas any sooner than November 2021, the trial date already set in this matter Northern District, it is not certain that a newly transferred case would progress to trial in the Defendant has agreed. The Court has entered a stipulated schedule in this matter, adopting the trial date to which Because this is not a case in which the Defendant seeks a trial date earlier than Southern

Factor 10 - Special Elements

rather than where to hold the trial." entire country is currently suffering the effects of the COVID-19 pandemic. Conn. June 18, 2020). (S.D.N.Y. Oct. 9, 2020); see also United States v. Yates, 19-CR-266-AWT, 2020 WL 3316053, at *7 (D. Defendant is particularly susceptible to the virus, but "this is an argument against holding any trial at all, Although we are all hopeful that effective treatments and vaccines may be available soon, the Moreover, although the numbers are United States v. Blakstad, 19-CR-486-ER, 2020 WL 5992347, at *6 in constant flux and will certainly change The Motion argues that

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S 4 S ∞ 7 6 2 inclined to consider this factor, it weighs against transfer before trial, as of the date of this writing (according to Johns Hopkins) Harris County's per capita today) would be significantly greater than in the Northern District, for trial. To the extent the Court is in the Southern District of Texas. It would not serve the interests of justice to require the victims and denied, and also that safe jury trials are more likely to resume more quickly in the Northern District than witnesses who are from neither district to travel to Houston where their chances of infection Defendant and all other trial participants (including the jury) are likely to be safer if the Motion is COVID infection rate is more than double San Francisco County's.¹ Thus, the current data suggest that (as

CONCLUSION

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experts are stripped out of the equation, there is almost nothing left supporting the relief requested in the cannot be the law that wealthy defendants can buy their venue simply by hiring experts. prosecution from the Northern District based on little more than Defendant's personal preference. be heard to complain about being held to account here. overpowering. and witnesses, and the fact that the Court and government are likely to hire their own, local experts) are Motion. Motion does seek to add weight by pointing to the location of Defendant's expert witnesses, but it surely The Motion boils down to a request that the Court exercise its discretion to uproot this The countervailing considerations (including the absence of any defect in venue, local victims Having elected to commit his crimes in the Northern District, Defendant should not now The Motion should be denied in its entirety And once the The

Respectfully submitted this 7th day of December 2020

DAVID L ANDERSON United States Attorney

s/ Michael G. Pitman
COREY J. SMITH
Senior Litigation Counsel
MICHAEL G. PITMAN
Assistant United States Attorney

Attorneys for United States of America

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²⁸ ¹ See https://coronavirus.jhu.edu/us-map (last visited December 7, 2020) (County Cases Per 100K Population: Harris County, Texas = 4,234; San Francisco County, California = 1,900). UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, IN PART, AND TO TRANSFER VENUE Case No.: 3:20-CR-00371-WHA

28	27	26	25	24	23	22	21	20	19	18	17	16	15	14	13	12	11	10	9 &	6 7	5	4	ω	2	1
his own defense.	18 U.S.C. § 4241(a) for a hearing to determine w	Defendant Robert T. Brockman will, and hereby does, respectfully move	Honorable William Alsup, located at 450 Golden Gate Avenue, San Francisco, Ca	PLEASE TAKE NOTICE THAT on Janu	NOTICE OF MOT				Defendant.	ROBERT T. BROCKMAN,	V.	Plaintiff,	UNITED STATES OF AMERICA,	SAN FRANCI	NORTHERN DISTRI	UNITED STATES	NOBERT I. BROCKIMAIN	Attorneys for Defendant	1755 Embarcadero Road Palo Alto, CA 94303 Telephone: +1-650-739-3939 Facsimile: +1-650-739-3900	Vincent Doctor (State Bar No. 319408) vdoctor@jonesday.com JONES DAY	Neal J. Stephens (State Bar No. 152071)	Facsimile +1-832-239-3600	Houston, TX 77002 Telephone 11 822 230 3030	JONES DAY	Jason Varnado (State Bar No. 211067)
	§ 4241(a) for a hearing to determine whether Mr. Brockman is competent to assist in	does, respectfully move pursuant to	Gate Avenue, San Francisco, California 94102,	PLEASE TAKE NOTICE THAT on January 12, 2021, at 2 p.m., in the courtroom of the	NOTICE OF MOTION AND MOTION				Date: January 12, 2021 Time: 2 n m	ASSIST IN HIS DEFENSE	A HEARING TO DETERMINE WHETHER	DEFENDANT ROBERT T. BROCKMAN'S	Case No. 3:20-cr-00371-WHA	SAN FRANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT						Telephone: +1-212-326-3939 Faccimile: +1-212-755-7306	250 Vesey Street New York NIV 10281 047	kkeneally@jonesday.com	Kathryn Keneally (appearance <i>pro hac vice</i>) New York State Bar No. 1866250

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	This Motion is based on the attached memorandum of points and authorities.
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Dated: December 8, 2020 JONES DAY Respectfully submitted,

s/ Neal J. Stephens
NEAL J. STEPHENS

Counsel for Defendant ROBERT T. BROCKMAN

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23 27 28 26 20 19 18 17 16 14 13 12 10 9 ∞ S ω 1 IV. \coprod Ξ Ω В. CONCLUSION В. \triangleright \triangleright BACKGROUND INTRODUCTION ARGUMENT compelling given the stage and nature of this case competency hearing 7. Mr. Brockman's dementia prevents him from assisting in his defense The evidence of Mr. Brockman's cognitive challenges is particularly 9 S 4 $\dot{\omega}$ 5 The record far exceeds a showing of "reasonable cause" Non-medical evidence..... Mr. Brockman's retirement..... **b** (a) him incapable of assisting in his defense..... The medical experts all agree that Mr. Brockman's dementia makes the defense of this case..... and settings, medical evidence establishes that he cannot assist in While Mr. Brockman may continue to function in familiar activities cognitive impairment Mr. Brockman's dementia causes him to lose insight into his own malingering Mr. Brockman's medical tests measured for and ruled out body dementia..... Mr. Brockman has experienced hallucinations consistent with Lewy confirmed through medical testing..... Mr. Brockman's cognitive impairment has been repeatedly critical cognitive abilities The medical diagnoses show deficiencies in Mr. Brockman's Forensic testing results..... Diagnostic testing results TABLE OF CONTENTS to require Page 20 12 15 14 13 15 14 12

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27 25 24 23 22 21 20 19 18 17 16 15 13 12 10 14 9 00 7 9 S 4 ω 1 Smith v. Ylst, Moore v. United States, Medina v. California, 505 U.S. 437 (1992)... Cases United States v. Brugnara, Odle v. Woodford, United States v. Garza, United States v. Duncan, United States v. Dreyer, United States v. Chun, United States v. Chandler, United States v. Bohol, Torres v. Prunty, Drope v. Missouri, Deere v. Woodford, 2015 WL 6126781 (N.D. Cal. Oct. 19, 2015) (Alsup, J.), aff d, 856 F.3d 1198 419 Fed. App'x 730 (9th Cir. 2011)... 223 F.3d 1103 (9th Cir. 2000)... 862 F.2d 872 (9th Cir. 1987).... 238 F.3d 1084 (9th Cir. 2001)... 464 F.2d 663 (9th Cir. 1972).... 339 F.3d 1084 (9th Cir. 2003)...... 751 F.3d 1130 (9th Cir. 2014)... 643 F.3d 1242 (9th Cir. 2011). 705 F.3d 951 (9th Cir. 2013)... 2019 WL 6683878 (E.D. Mich. Dec. 6, 2019)..... (M.D. Fla. May 26, 2020) 2020 WL 2735917 (M.D. Fla. May 5, 2020), adopted by 2020 WL 2735424 (9th Cir. 2017)...... 420 U.S. 162 (1975)..... TABLE OF AUTHORITIES ņ .16, 15, 17 16 18 16

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MR. BROCKMAN IS COMPETENT TO ASSIST IN HIS DEFENSE MOTION FOR A HEARING TO DETERMINE WHETHER

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To the Honorable United States District Judge William Alsup:

government counsel, who oppose the relief sought in this Motion. determine his mental competency to stand trial. The Defendant Robert T. Brockman moves under 18 U.S.C. Defense counsel met and conferred with § 4241(a) for a hearing

In support of this Motion, the Defendant states as follows

I. INTRODUCTION

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shall grant the motion" for a hearing the consequences of the proceedings against him or to assist properly in his defense." rendering him mentally incompetent to the extent that he is unable to understand the nature and cause to believe that the defendant may presently be suffering from a mental disease or defect 18 U.S.C. § 4241(a). Upon a showing of reasonable cause, § 4241(a) mandates that "[t]he court This Court is asked to make one decision on this motion: whether there is "reasonable

parkinsonism,² or Lewy body dementia,³ or some combination of the three cognitive impairment and other symptoms are consistent with Parkinson's disease Mr. Brockman's case, his treating and diagnostic doctors have concluded that his current Mr. Brockman has dementia. The causes and impact of dementia may vary. In

him incapable of assisting in his defense. multiple occasions over a twenty-two month timespan, and concluded that his dementia makes hearing. Four highly qualified doctors in Houston, Texas, have examined Mr. Brockman on See Drope v. Missouri, 420 U.S. 162, 180 (1975). This alone is more than "reasonable cause" to compel a

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dementia. Parkinson's disease is a progressive nervous system disorder that affects movement and may cause See https://www.mayoclinic.org/diseases-conditions/parkinsons-disease/symptoms-causes/syc-20376055

abnormalities seen in Parkinson's disease, especially resulting from the loss of dopamine-containing neurons. ² Parkinsonism is a term used to describe a condition that causes a combination of the movement See

https://www.mayoclinic.org/diseases-conditions/lewy-body-dementia/symptoms-causes/syc-20352025 terminal, with death resulting on average approximately eight years after the onset of symptoms. brain regions involved in thinking, memory and movement. Lewy body dementia is incurable, progressive, and ³ Lewy body dementia results from protein deposits, called Lewy bodies, that develop in nerve cells in the

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explain that he may be having difficulty in understanding questions and information provided to investigation, and in fact only informed his counsel about their conclusions in July 2019, course of treatment. Mr. Brockman did not seek out these doctors as a response to this neuropsychologist in late 2018 and early 2019, for the purpose of obtaining a diagnosis and and sought medical attention in mid-2018. Mr. Brockman began to raise concerns about cognitive problems at least as early as 2017, He was examined by three doctors and

how his brain is functioning believe that the information that he is providing is correct, but it will be the result of distortions in dementia will cause his brain to fabricate information to fill in for gaps in his memory. He will characterized by what they refer to as "confabulation": when asked a question, Mr. Brockman's loss or forgetfulness. The doctors describe the impact of Mr. Brockman's medical condition as deficiencies. As detailed below, Mr. Brockman's cognitive limitations go well beyond memory asked and his recollection of events, and manifests as significant long- and short-term memory access information, renders him unable to make connections between questions that he is being Mr. Brockman's doctors have concluded that his medical condition makes him unable to

hearing. describe Mr. Brockman's day-to-day behavior and the experience of counsel pursuant to § 4241(a), see id., and will be supported by witnesses, including counsel, who can treating doctors more than meet the standard for "reasonable cause" that mandates a hearing 2008)). Questions about the defendant's competency in any one of these categories may require counsel's statements about the defendant's competency." United States v. Garza, broad categories: "medical history, the defendant's behavior in and out of court, and defense deciding whether to conduct a competency hearing, courts should consider evidence from three proceedings against him, to consult with counsel, and to assist in preparing his defense may not 751 F.3d 1130, 1134 (9th Cir. 2014) (citing *United States v. Marks*, 530 F.3d 799, 814 (9th Cir. be subjected to a trial." Drope, 420 U.S. at 171. The Ninth Circuit has instructed that, when A defendant who "lacks the capacity to understand the nature and object of the Drope, 420 U.S. at 180. The conclusions reached by Mr. Brockman's diagnostic and

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II. BACKGROUND

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physician with Baylor College of Medicine, for a general physical examination.⁵ Dr. examination, Mr. Brockman told Dr. Lerner that he had not been feeling well for several months. Mr. Brockman in the years following his treatment for bladder cancer in 2006. During that Mr. Brockman had a routine appointment with Seth P. Lerner, M.D., who had been monitoring am having increasing memory problems." smell. They are afraid that it is an early sign of alzheimer's or dementia. I am feeling good but his son and wife "are after me to consult with the right doctor regarding my loss of my sense of Lerner referred him to James L. Pool, M.D., who like Dr. Lerner is a professor and treating In May 2017, Mr. Brockman sent an email to his friend, Dr. Stuart Yudofsky, stating that Keneally Decl. Ex. A.⁴ In September 2018

memory disorders; and Michele K. York, Ph.D., 8 a neuropsychologist, all with Baylor College of disorders; Melissa Yu, M.D., 7 a neurologist and specialist in Alzheimer's Disease and other Joseph Jankovic, M.D., 6 a neurologist and specialist in Parkinson's disease and other movement and referred him to three medical experts to determine the cause and a course of treatment: Medicine in Houston, Texas. Dr. Pool examined Mr. Brockman in December 2018, diagnosed him as having dementia, Keneally Decl. Ex. G at ¶ 4.9

cognitive impairment is more consistent with Lewy body dementia. Keneally Decl. Ex. I at 4-5 movements are consistent with Parkinson's disease or parkinsonism, but they concluded that his parkinsonism. Keneally Decl. Ex. H at 5. Dr. York and Dr. Yu agreed that Mr. Brockman's Mr. Brockman presented symptoms that are consistent with Parkinson's disease or vascular These doctors completed their examinations by March 2019. Dr. Jankovic found that

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in support of this Motion. ⁴ "Keneally Decl." refers to the Declaration of Kathryn Keneally, affirmed December 8, 2020, and submitted

⁵ Dr. Lerner's and Dr. Pool's biographies are submitted at Keneally Decl. Ex. B and Ex. C, respectively

⁶ Dr. Jankovic's biography is submitted at Keneally Decl. Ex. D

⁷ Dr. Yu's biography is submitted at Keneally Decl. Ex. E

⁸ Dr. York's biography is submitted at Keneally Decl. Ex. F.

for the Court's convenience is submitted again at Keneally Decl. Ex. G. Dismiss in Part and Transfer Proceedings to the United States District Court for the Southern District of Texas, ⁹ Dr. Pool provided a declaration dated November 25, 2020 in support of Mr. Brockman's Motion to

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Decl. ¶ 6

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Ex. J at 7.

The exact diagnosis can only be confirmed post-mortem.

Keneally Decl. Ex. G at ¶ 5.

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Romatowski Decl. ¶¶ 7-8; 10 Keneally Decl. ¶ 5. This news was consistent with, and went a long simply; he never asked if this would have an impact on the then on-going investigation then, he did so to ask for understanding that he may need things repeated or explained more after he first raised the issue with Dr. Lerner and two years after his email to Dr. Yudofsky. way to explain, counsel's experience with Mr. Brockman. Romatowski Decl. ¶¶ 10, 13; Keneally Mr. Brockman did not inform his counsel of his health issues until July 2019 – ten months

examinations conducted on December 3, 2019, and October 7, 2020. Keneally Decl. ¶¶ 26, 33 perform what she described as forensic tests; she has now done so twice, resulting in reports for the neuropsychologist who first tested Mr. Brockman in March 2019, advised that she should in response to questions from counsel. Keneally Decl. ¶¶ 22-25, Ex. L, Ex. M, Ex. N. Dr. York, Keneally Decl. ¶¶ 18-19. The three medical doctors sent follow-up letters to clarify certain points Ex. O, Ex. R Counsel subsequently obtained the medical reports and spoke with each of the doctors

such interviews. Keneally Decl. ¶ 28. pursuant to the Health Insurance Portability and Accountability Act ("HIPAA waivers") to allow the government interview the doctors, with a pledge that the defense would not participate, either decision whether to seek an indictment. Keneally Decl. ¶ 28. Mr. Brockman's inability to assist in his defense, and to investigate this issue before reaching any telephone conference on April 23, 2020, defense counsel urged the prosecutors to consider and first forensic reports, to the government on April 9, 2020. Keneally Decl. ¶ 28. grand jury on October 1, 2020. by preparation of the witnesses in advance or attendance at the interviews, and provided waivers Keneally Decl. ¶ 31. The government's only response was to seek the Indictment returned by the Defense counsel provided the doctors' medical reports and letters, and Dr. York's clinical So now this is a matter for the Court We know from the doctors that they were never contacted. In particular, the defense asked that

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submitted in support of this Motion. ¹⁰ "Romatowski Decl." refers to the Declaration of Peter J. Romatowski, affirmed December 8, 2020, and

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may not be competent "to assist properly in his defense." hearing on its own motion" upon a showing of "reasonable cause to believe" that the defendant provides that "[t]he court shall grant the motion [for a competency hearing], or shall order such a The sole decision before this Court is whether to proceed with a hearing. Section 4241(a)

assist in his defense, easily meet the "reasonable cause" standard, and merit consideration at a Mr. Brockman's wife, friends and colleagues, and counsel, evidence that he is not competent to hearing. The conclusions of Mr. Brockman's doctors, as well as the first-hand experiences

Mr. Brockman's dementia prevents him from assisting in his defense

cognitive abilities The medical diagnoses show deficiencies in Mr. Brockman's critical

to questions about past events which is an inability to access his memories in a manner that will enable him reliably to respond Mr. Brockman's form of dementia has severe cognitive consequences, one aspect of

memory, and executive function—in essence, all aspects of thought and cognitive function." mere memory loss, noting: "The impact of dementia includes visual spatial function, language Keneally Decl. Ex. N. In her January 21, 2020 letter to counsel, Dr. Yu specifically distinguished dementia from

connections between questions that he is being asked and his recollection of events." dementia makes him unable to recall information and to respond accurately to inquiries. Decl. Ex. M at 1 Dr. Jankovic stated that Mr. Brockman has "trouble accessing information" and "making Dr. Jankovic's January 14, 2020 letter addressed the manner in which Mr. Brockman's Keneally

confabulation is "a symptom of cognitive impairment, and is not voluntary." A cognitively occurred." someone to "sometimes make up stories or provide information about something that has not tendency toward confabulation. Dr. Jankovic described this medical condition as causing Dr. Jankovic also noted that a characteristic of Mr. Brockman's cognitive impairment is Keneally Decl. Ex. M at 1. Dr. Jankovic distinguished this from lying, explaining

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impaired person will believe that he is reporting truthfully when nonetheless confabulating. Keneally Decl. Ex. M at 1-2. Dr. Pool's January 14, 2020 letter summarized how Mr. Brockman's cognitive

he is being asked in the present or assimilate the information to report it remember past events, he cannot accurately relate them to the question that true, but it is not. In essence, for a person such as Mr. Brockman, dementia will attempt to fill in gaps to enable him to respond to questions or to risk of confabulation. When a person has dementia, his memory function addition, his ability to report on past events may be distorted by the high comprehend what is being asked of him and to respond appropriately. of such confabulation, rather than genuine memory accurately. If he can compose a response at all, it will likely be the product based on fact or accurate memory. The speaker will believe the story to be report on past events. will render long-term memory inaccessible and defective. Quite simply, if information is presented to him, he will be unable to While the story may sound logical, it will not be Even if he can

Keneally Decl. Ex. L at 2

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impairments would affect his ability to participate in his defense

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understand his lawyers' questions about the events at issue and reliably respond At bottom, Mr. Brockman cannot do the one thing that is most essential to his defense:

12 through medical testing Mr. Brockman's cognitive impairment has been repeatedly confirmed

on October 7, 2020, for the purpose of evaluating changes since the December 3, 2019 evaluation. Mr. Brockman's ability to assist in his defense, Keneally Decl. ¶ 26, Ex O at 1; and a third time second time on December 3, 2019, at the request of counsel for the specific purpose of evaluating conduct cognitive tests to assist Dr. Yu in reaching a diagnosis, Keneally Decl. Ex. I at 1; a their diagnoses. Keneally Decl. ¶ 33, Ex. R Dr. York, a neuropsychologist, conducts clinical tests to assist medical doctors in forming Dr. York examined Mr. Brockman three times: first on March 1, 2019, to

graphic illustration of Mr. Brockman's cognitive impairment: he cannot draw a clock. Decl. Ex. O at 6, Ex. R at 6 Dr. York's December 3, 2019 and October 7, 2020 forensic reports include a simple Keneally

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Asking a patient to draw a clock is one of the basic tests to determine cognitive

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period of 19 months, side-by-side in her most recent report: chances at drawing a clock. Her most recent report sets out five clock drawings, done across a During her October 7, 2020 examination, Dr. York gave Mr. Brockman three more

10/07/2020 03/01/2019 Clock Drawing "10 after 11" 10/07/2020 12/03/2019 10/07/2020

Keneally Decl. Ex. S at 1.

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clock drawing with misplaced grid and lines), Ex. Q at 1 (Dr. Pool's October 5, 2020 medical requested time, with correctly placed numbers, or even with the numbers written within the circle clock and having practiced doing so, Mr. Brockman could not draw a clock face showing the for the clock. See Keneally Decl. Ex. K at 1 (Dr. Pool's October 1, 2019 medical report with Even on his third try of the day, knowing in advance that he would be asked to draw a

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report with clock drawing with three hands)

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(a) Diagnostic testing results

"processing speed was extremely" slow, and that his "handwriting was micrographic." he "perseverated to previous tasks" (meaning that he repeated prior responses out of context), that directions," that he "frequently needed repetition of directions and to be reoriented to task," that Mr. Brockman during the testing, noting that he showed a "moderately decreased ability to follow "[t]he examiner needed to be concrete for him to understand the task instructions," that his Decl. Ex. I at 2 York's March 1, 2019 clinical report set out her behavioral observations of Keneally

Mr. Brockman was unable to complete certain tests "due to cognitive/behavioral problems." apparent his cognitive shortcomings. over several hours, followed by a summary of the results in clinical terms, many of which make Keneally Decl. Ex. I at 2 Dr. York's March 1, 2019 report listed the large number of tests that she administered Keneally Decl. Ex. I at 2-4. She also reported that

attention, fund of information, verbal and visual abstract reasoning, verbal fluency and naming." impaired performances were found within the low average to average ranges on measures of basic inhibition, working memory, and problem solving), and visuoconstruction," adding: "[t]hese list, learning and recall of visual material, semantic fluency, executive functions (set shifting, measures of sustained attention/concentration, learning and recall of prose material and a word clinical terms: "Mr. Brockman demonstrated borderline impaired to deficient performances on functioning in the above average range." Keneally Decl. Ex. I at 4. She continued, in somewhat functioning (WIAS-IV FSIQ = 87), which is a decline from his estimated premorbid intellectual successful business - "currently operates in the low average range of general intellectual Keneally Decl. Ex. I at 4 Dr. York determined that Mr. Brockman – a man who founded and built a highly

and clinical observations, Dr. York concluded: "his pattern of cognitive impairments is consistent dementia of mild to moderate severity." Keneally Decl. Ex. I at 4. Dr. York determined that Mr. Brockman's performance on the clinical tests indicated "a Based on her battery of tests

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with Dementia with Lewy Bodies." Keneally Decl. Ex. I at

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exercise caution when operating household appliances. Keneally Decl. Ex. I at 5-6 information be presented to him in a written format so that he can refer to it over time, and that he help him keep track of important information such as the location of family members, that location to assist him in "temporal orientation" and a large dry-erase board in a prominent spot to impairment. She advised, for example, that he have a large-type calendar in a highly visible Dr. York's recommendations are themselves jarring indications of Mr. Brockman's

.7 implications on his work and advised he discuss further with his family." Keneally Decl. Ex. J at him "on diagnosis of a neurodegenerative disorder with cognitive impairment and possible She concluded that Mr. Brockman's symptoms are "consistent with dementia with Lewy Bodies." memory and executive functioning, with mild functional declines." Keneally Decl. Ex. J at 6 moderate severity with deficits in areas of visuospatial functioning, verbal and nonverbal episodic Dr. Keneally Decl. Ex. J at 6, 7. She recommended that Mr. Brockman stop driving, and she advised York's clinical findings. Dr. Yu conducted an examination of Mr. Brockman on March 20, 2019, and reviewed Dr. Yu summarized: "Pattern indicates a dementia of mild to

producing dopamine are irrevocably damaged. Keneally Decl. Ex. J at 7, Ex. P. critical for movement and cognition. In Mr. Brockman's case, the critical neurons responsible for Dr. basis for his dementia. Mr. Brockman has significant, measurable changes to his brain structure that can be seen as the Jankovic. Dr. Yu was also able to review the results of a DaTscan that had been ordered by A DaTscan measures the number of dopamine transporters in the brain regions In other words

(b) Forensic testing results

enable her to render an opinion in a legal proceeding. Keneally Decl. ¶ 26. impact of Mr. Brockman's condition. When counsel contacted Dr. York, she explained that there terms. a different battery of tests, which she described as forensic testing, that she would perform to Counsel contacted each of the doctors to get a better understanding, in lay terms, of the The diagnostic reports prepared by each of the doctors were written in technical medical She conducted that

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findings in clinical terms. comprehend task instructions and maintain task set independently," and set out her neurological administered, as well as the tests that Mr. Brockman was unable to complete "as he was unable to As with her March 1, 2019 clinical evaluation, Dr. Keneally Decl. Ex. O at 4-5 York again listed the tests that she

prior testing, while declining in other areas. Keneally Decl. Ex. O at 7–8. Dr. York summarized: Dr. York found that Mr. Brockman had improved in some areas from the results of

executive functioning, and visuospatial functioning with significant in the areas of verbal and nonverbal episodic memory, processing speed, indicates a dementia of mild to moderate severity characterized by deficits March 2019. Mr. Brockman's pattern of neuropsychological performance apparent during this evaluation as compared to his previous evaluation in demonstrated a blank stare expression. These fluctuations were more measures; however, during several tasks, he became more confused and throughout the evaluation. He demonstrated improvements on a few functional declines. It is noted that Mr. Brockman's cognition fluctuated significantly

category of Lewy Body Dementias." Keneally Decl. Ex. O at 8. Dr. York concluded: "His dementia falls under the diagnostic Keneally Decl. Ex. O at 8

Dr. York repeated her forensic examination of Mr. Brockman on October 7, 2020. 11

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assurance that Mr. Brockman would attend an arraignment to be scheduled on the following Thursday, October 15, on the following day. The prosecutors next contacted defense counsel to arrange a call for Saturday, October 10, examined by Dr. Pool and Dr. York, and that counsel planned to speak with both doctors about those examinations with a commitment that counsel would not take steps to prepare them or participate in any government interviews, counsel spoke with the lead prosecutors on September 30, 2020 to let them know that Mr. Brockman would again be 2020, during which they disclosed that there was a sealed Indictment (which is dated October 1) and asked for Keneally Decl. ¶ 30. Keneally Decl. ¶ 30. Mr. Brockman subsequently revoked the HIPAA waivers. Keneally Decl. ¶ 31. ¹¹Having had no response since Mr. Brockman's offer in April to allow the government access to the doctors The prosecutors did not inform counsel that they planned to seek an Indictment in this matter

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accurately," and that while his "[c]onversational speech was coherent," his speech was session," that he sometimes became "confused" during "tasks that he originally was completing behavioral observations, noting that Mr. Brockman's "cognition fluctuated throughout the testing insight." month and day of the week," and "repeats himself and asks the same question again without in his decision making abilities," he "forgets names of familiar individuals," "is disoriented to working memory have declined and his processing speed is slower," he has experienced "declines medication regimen as . . . his wife manages his medication box," "his short-term memory and his was unable to complete "due to cognitive/behavioral problems." Keneally Decl. Ex. R at 5 "tangential without insight." Keneally Decl. Ex. R at 5. She again listed tests that Mr. Brockman Keneally Decl. ¶ 33, Ex. R. Keneally Decl. Ex. R at 3. Dr. York's October 2020 forensic report included detailed Dr. York reported that Mr. Brockman stated that he is "unsure of his

and "[r]etention of the initially learned material was 0.0%." 0.0% retention," and that when presented with basic geographic figures, Mr. Brockman's when he was asked to memorize word lists, his "delayed recall was in the deficient range with placing the hands on a clock face," and was able to identify only "2/3 pictured animals," score of 96, that Mr. Brockman "demonstrated difficulties with set shifting, drawing a cube, and declines across all domains assessed" relative to her prior evaluations. Keneally Decl. Ex. R at 8. "[i]mmediate recall . . . was borderline impaired," "[d]elayed recall of the designs was deficient," As examples, she noted that Mr. Brockman's WAIS-IV FSIQ estimate declined to 80 from a prior Dr. York found that Mr. Brockman's "cognitive profile demonstrated interim cognitive Keneally Decl. Ex. R at 6

in the two months since her last examination abilities declined, in the ten-month period between Dr. York's two sets of forensic testing. Dr. Mr. Brockman's brain sufficient to explain his cognitive impairment, which was confirmed by based on Dr. York's analyses, it is likely that Mr. Brockman's mental condition has gotten worse York's October 7, 2020 report that Mr. Brockman's dementia progressed, and his cognitive York's clinical tests in March 2019 and forensic tests in December 2019. In sum, the DaTscan performed in early 2019 showed structural changes in Now we know from

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Ś Mr. Brockman has experienced hallucinations consistent with Lewy

body dementia

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hallucination that support her conclusion that this is the correct diagnosis Hallucinations are a hallmark of Lewy body dementia. Dr. York reported two incidents of

of the testing room that was not present." Keneally Decl. Ex. I at 2, 5 Mr. Brockman experiencing an hallucination. As Dr. York reported: "He saw a bug on the floor In her diagnostic examination of Mr. Brockman in March 2019, she personally observed

answer pages not related to the dark web or suicide. Keneally Decl. Ex. R at 3 and pictures that Mr. Brockman took of the computer screens during the incident showed Yahoo Mr. Brockman's son was not at his parents' home at that hour, there was no sign of a break-in, as "from the dark web and suicidal information." car driving away, and claimed that his computer was open to sites that Mr. Brockman described believed that he heard someone leaving his house at about 5 a.m., thought that he saw his son's described what she considered to be a "delusional incident" or hallucination: Mr. Brockman Then in her October 7, 2020 report following her second set of forensic testing, Dr. York Keneally Decl. Ex. R at 3. In fact

These incidents are further medical indicia of Mr. Brockman's cognitive impairment

Mr. Brockman's medical tests measured for and ruled out malingering

report: Decl. Ex. J at 2, Ex. O at 3-4. Dr. York concluded: "It is this examiner's opinion based on the draw a clock, that he practiced before subsequent examinations in an effort to improve. abilities." Keneally Decl. Ex. O at 4. In fact, Mr. Brockman was so startled by his inability to therefore, the following results are thought to be an accurate estimation of his current cognitive whether Mr. Brockman was malingering, that is, faking impaired cognition. As stated in her was not exaggerating or embellishing the nature and extent of his cognitive impairment." Keneally Decl. Ex. O at 7. testing conducted and behavioral observations that Mr. Brockman was putting forth full effort and "He passed several embedded and stand-alone measures of performance validity: Dr. York's December 3, 2019 examination specifically included tests to determine Keneally

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Ŋ Mr. Brockman's dementia causes him to lose insight into his own cognitive impairment

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themselves as functioning normally, even well." their disease." "experience anosognosia, which means that they will lose insight into the cognitive limitations of Dr. Yu explained in her January 21, 2020 letter that patients with dementia will Keneally Decl. Ex. N. She continued: "Individuals with dementia may perceive Keneally Decl. Ex. N.

insight into his cognitive problems," noting that he "said he was not doing well, but he appeared very surprised." Dr. York's March 1, 2019 clinical report observed this in Mr. Brockman: Keneally Decl. Ex. I at 2 "He lacked

cognition interferes with his ability to assist in his defense In other words, to an important degree, Mr. Brockman cannot recognize that his impaired 5 and settings, medical evidence establishes that he cannot assist in the While Mr. Brockman may continue to function in familiar activities

around him, and an individual who enjoyed high intelligence and a high level of functioning prior speaking, a person with mild to moderate dementia has some recognition of what is going on dementia will be characterized by a person's inability to know where he is or with whom he active and to continue working. As Dr. Pool explained in his letter to counsel, while severe to the onset of dementia may be able to conceal his limitations under certain circumstances Keneally Decl. Ex. L at 2 Even as Mr. Brockman's illness has progressed, he has made efforts to remain socially

characteristic of Lewy body dementia that a person will experience day-to-day and even hour-towhen pressed may be able to speak on business issues in a way that appears functional, but will face difficulties further noted that "individuals who have been in business or professionally active for a long time She referred to this as the ability to retain "social niceties" despite cognitive impairment, and expansive vocabulary may appear to function well on a surface level." limitations, noting that "[i]ndividuals with dementia, who have good social instincts and Dr. Yu similarly described how others may also fail to perceive someone's cognitive for decisions or specifics." Keneally Decl. Ex. Z Dr. Yu noted that it is a specific Keneally Decl. Ex. N.

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hour fluctuations in the ability to function. Keneally Decl. Ex. N

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.7 him incapable of assisting in his defense The medical experts all agree that Mr. Brockman's dementia makes

full context, their expert opinion is clear that Mr. Brockman cannot assist in his defense: along with other evidence at a hearing. Without in any way diminishing the importance of that The four doctors' results of examination deserve to be considered in full and in context

cognitive function." As Dr. Yu has stated, Mr. Brockman's dementia affects "all aspects of thought and Keneally Decl. Ex. N

cognitive impairment will prevent him from doing so." Keneally Decl. Ex. M at 1 whether Mr. Brockman can assist you in preparing a legal defense. It is my view that his Responding to counsel's inquiry, Dr. Jankovic stated: "I understand that you are asking

make comparisons and weigh his options." Keneally Decl. Ex. R at 8 surrounding the case and manipulate this information in a logical manner that will allow him to recall and demonstrate a thorough understanding of the relevant elements of the issues lack of effective treatments, his prognosis is for continued cognitive decline. He is unable to defense." She continued in detail: "Due to the neurodegenerative nature of this disease and the fluctuations, it remains my opinion that Mr. Brockman is unable to participate and aid in his own findings, his diagnosis of dementia, and the breadth and severity of his cognitive impairments and Dr. York stated in her October 7, 2020 forensic report: "Based on the current cognitive

assist his attorneys in his defense, if criminal charges were to be brought against him." Decl. Ex. L at 2 And Dr. Pool concluded: "I concur with the medical position that Mr. Brockman cannot Keneally

B. Mr. Brockman's retirement

Mr. Brockman fully retired on November 6, 2020. Keneally Decl. ¶ 36

Decl. in an effort to continue to lead or at least contribute to the business that he built. decades of experience, as well as the support and assistance of his wife and business colleagues. Ex. L at 2, For as long as he could, Mr. Brockman tried to rely on his former high intellect and Ex. N. He knows now that he can no longer do See Keneally

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C. Non-medical evidence

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his cognitive impairment. sometimes on a near-daily basis, to corroborate the observations made by the doctors. Keneally Decl. ¶ 35. In particular, Mr. Brockman's wife of 52 years will attest to the steady progression of Counsel for Mr. Brockman will present testimony from people who interact with him. Keneally Decl. ¶ 35

recently been told. Romatowski Decl. ¶ 11; Keneally Decl. ¶ 6 recently remembered, in effect confabulating what he once may have known and what he has with counsel as if it is news that he thinks he should provide to counsel or something that he has counsel provides him with information, he will sometimes report it back in his next discussion information, regardless of relevance. Romatowski Decl. ¶¶ 11-14; Keneally Decl. ¶ 6. tells him. Romatowski Decl. ¶ 11; Keneally Decl. ¶ 6. information from the past, to review and evaluate documents, or to retain information that counsel Decl. ¶ 13; Keneally Decl. ¶¶ 6, 20. Mr. Brockman has been unable to relate important Mr. Brockman have been consistent with the medical findings described above. Romatowski Decl. ¶¶ 9-15; Keneally Decl. ¶¶ 4, 6, 20-21. Counsel's interactions with Mr. Brockman's cognitive impairment makes him incapable of assisting in his defense Mr. Brockman's counsel can also directly confirm what the experts predicted: He repeatedly provides the same Romatowski When

III. ARGUMENT

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incompetent to stand trial." believe that a defendant is unable to assist properly in his defense 18 U.S.C. § 4241(a), which requires a competency hearing upon a showing of reasonable cause to Due process guarantees "a defendant's right not to be tried or convicted while Drope, 420 U.S. at 172. This principle is embodied in

The record far exceeds a showing of "reasonable cause" to require a competency hearing

The present record requires a § 4241(a) hearing on Mr. Brockman's competency

this phase. and not whether the defendant is competent, courts do not weigh the reliability of the evidence in Because the narrow question at this stage is only whether to hold a competency hearing. Instead, "the trial court must look at the record as a whole and accept as true

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464 F.2d 663, 666 (9th Cir. 1972) (emphasis added). doubt that cannot be dispelled by resort to conflicting evidence." Moore v. United States conflicting evidence. If substantial evidence of incompetence exists "from any source, there is a 641 F.2d 1253, 1258 (9th Cir. 1981)). Nor may the court refuse a hearing on the basis 862 F.2d 872, 877 (9th Cir. 1987) (citing Chavez v. United States, evidence of possible incompetence" when deciding whether to hold a hearing. Smith v. Ylst,

experts opined that defendant was incompetent). 339 F.3d 1084, 1086-87 (9th Cir. 2003) (holding that hearing was required when two medical the courtroom" and has not had his competence previously questioned by his counsel. Odle v 52 F.3d 1286, 1290 (4th Cir. 1995) (quoting Griffin v. Lockhart, 935 F.2d 926, 930 (8th Cir. whether a sufficient doubt exists' as to the defendant's competence." United States v. Mason Ex. O at 8, Ex. R. at 7-8. "Medical opinions are 'usually persuasive evidence on the question of that will prevent him from assisting in his defense. professionals are unequivocal in their assessment that Mr. Brockman has progressive dementia Woodford, 238 F.3d 1084, 1088 (9th Cir. 2001); see also Deere v. Woodford, 1991)). Medical evidence can mandate a hearing even when the defendant has "appeared calm Based on multiple examinations conducted over a nearly two-year period, the medical Keneally Decl. Ex. L at 2, Ex. M at 1, Ex. N,

evidence [was] such that § 4241(a) required a full competency hearing before the district court express no opinion on which of the experts has the better of the argument emotions." consistent with [his] behavioral deficits in 'the ability to make rational plans and modulate supported by brain scans establishing that the defendant had "an unusual brain structure neuropsychiatry, "who had examined Defendant personally and . . . formed the same opinion reports from three experts, all well established and highly regarded in the field of medical evidence of incompetence in that case that is comparable to the evidence available here: district court erred by failing to hold a full competency hearing prior to sentencing based on .. Defendant's 'mental diseases and defects render him . . . incompetent,'" which were In United States v. Duncan, 643 F.3d 1242 (9th Cir. 2011), the Ninth Circuit held that the Id. at 1249. Contrary medical opinions were not a reason to refuse a hearing; "[w]e We hold only the

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could reach a decision." Id. at 1250.

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whether he can assist in his defense, and also whether he was participating in the examination in forensic testing, which Dr. York recommended to enable her to answer the exact question as to explain his dementia symptoms. concluded. Keneally Decl. ¶¶ 5-6. Brain scans have revealed structural abnormalities that struggling with cognitive issues until four months after these medical examinations were purpose of this case, but to be diagnosed and treated. 1-2,has good faith or malingering to obtain a desired result. Keneally Decl. Ex. R at 4-5. 12 been apparent to his family, and ultimately to him, for several years. Ex. I at 1, Ex. J at 1-2, Ex. L at 1, Ex. O at 2-3. He did not seek medical evaluations for the The medical evidence here is at least as compelling. Keneally Decl. Ex. P. He has twice submitted to a battery of He did not even tell his lawyers that he was Mr. Brockman's cognitive decline Keneally Decl. Ex. H. at

rather than was recently told. has confabulated information told to him by counsel, recalling it later as if he just remembered information from the past or to review and evaluate documents. Romatowski Decl. ¶ 11. And he directly aligns with the medical findings: Mr. Brockman has been unable to relate important considered seriously by the court" (citing Medina, 505 U.S. at 540)). Counsel's experience 223 F.3d 1103, 1109 (9th Cir. 2000) (recommendations by defense counsel "should [be] informed view of the defendant's ability to participate in his defense." 505 U.S. 437, 450 (1992) (citations omitted); see also Torres v. Prunty Moreover, as the Supreme Court has noted, "defense counsel will often have the best-Romatowski Decl. ¶ 11; Keneally Decl. ¶ 6 Medina v. California,

information, or to compare the two. required to assist in his defense: he cannot reliably access memories, meaningfully process new Mr. Brockman's cognitive impairment, as detailed by his doctors, goes directly to what is Keneally Decl. Ex. L at 2, Ex. R. at 7-8. He has only partial

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defendant was incompetent to stand trial and not malingering). States v. Hernandez, 2018 WL 2738880, *8-15 (N.D. Ohio June 7, 2018) (relying on forensic testing (E.D. Mich. Dec. 6, 2019) (noting importance of testing for malingering to ensure the validity of test results); *United* 2020 WL 2735424 (M.D. Fla. May 26, 2020); United States v. Chun, 2019 WL 6683878, *9 States v. Chandler, 2020 WL 2735917, *16 (M.D. Fla. May 5, 2020) (noting the propriety of giving ¹² See also United States v. Bohol, 419 Fed. App'x 730, 731 (9th Cir. 2011) (affirming decision that defendant was mentally incompetent where based on report and testimony provided by forensic psychologist); United weight to the testimony of a forensic psychologist" in competency determinations), adopted by "somewhat more ð

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information that he genuinely believes to be true. Keneally Decl. Ex. L at 2, Ex. M at 1-2 insight into his limitations, and may respond to questions by "confabulating"

all the evidence on the issue of whether Mr. Brockman may fairly be put to trial establishes reasonable cause for this Court to hear from these and other witnesses, and consider Taken together, the medical opinions and counsel's experience more than sufficiently

B compelling given the stage and nature of this case The evidence of Mr. Brockman's cognitive challenges is particularly

evidence. Romatowski Decl. ¶¶ 11-15; Keneally Decl. ¶¶ 4, 6, 20-21. government has estimated that it will produce what may amount to tens of millions of documents. decades of numerous alleged financial transactions and structures across multiple countries. 2015 WL 6126781, at *2 (N.D. Cal. Oct. 19, 2015) (Alsup, J.), aff d, counsel must be evaluated in light of the type of participation required." specific stage of the criminal proceeding, the defendant's ability to participate or assist his Keneally Decl. ¶ 37. We are at the very beginning of a criminal prosecution. The charges sweep broadly and spar 856 F.3d 1198 (9th Cir. 2017). This motion is being filed less than two months after arraignment. 705 F.3d 951, 961 (9th Cir. 2013) (citation omitted), applied in United States v. Brugnara "Although the level of competency mandated by due process does not vary based on the Mr. Brockman cannot help counsel to understand the charges or the United States v. Dreyer,

of defense witnesses, and in the decision whether the defendant should take the stand." provide "assistance in counsel's cross-examination of witnesses, in the selection and preparation complex, lengthy trial). To assist counsel at trial, Mr. Brockman would need to be able to retain 733 F. Supp. 600, 604 (S.D.N.Y. 1989) (emphasizing importance of defendant's competence in with counsel in helping prepare an effective defense." Odle, 238 F.3d at 1089 (citing Dusky v it requires the mental acuity to see, hear and digest the evidence, and the ability to communicate competence to stand trial does not consist merely of passively observing the proceedings. Rather, newly presented information, compare it to his own recollections, and process all this so as to United States, 362 U.S. 402, 402 (1960)); see also United States v. Helmsley. Nor would Mr. Brockman's impairment become less problematic at trial. "After all Helmsley,

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7 9 S 4 ω 2 who can effectively assist in the defense of a complex case, that Mr. Brockman cannot do so. experience of Mr. Brockman, as compared to his career experience with witnesses and defendants compare it to remembered information, and thereby assist his counsel in his defense. treating doctors make clear that, specifically, Mr. Brockman cannot retain new information, Romatowski Decl. ¶¶ 2-4, 8-15 733 F. Supp. at 605. Decl. Ex. L at 2, Ex. M at 1, Ex. N, Ex. O at 8, Ex. R. at 7-8. Counsel has confirmed based on his The medical reports, forensic reports, and letters from his diagnostic and Keneally

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showing concerning Mr. Brockman's competency, it may cross-examine the doctors and other Mr. Brockman's home in Houston. 13 independent expert selected by the court, asking only that the examination take place proximate to opportunity to have Mr. Brockman examined independently, and certainly will agree to an report). Prior to the return of the Indictment, defense counsel offered the government the examination is to be conducted and information to be included in any psychiatric or psychological independent expert. 18 U.S.C. § 4241(b); see also 18 U.S.C. § 4247(b)-(c) (describing how the may order that a psychiatric or psychological examination of the defendant be conducted" by an Court is merely whether a hearing should occur—and it should. Prior to any hearing, "the court based on the current proffer, which we nonetheless submit is compelling. witnesses, and present its evidence Again, the Court is not asked at this stage to decide the ultimate question of competence To the extent the government questions the defense's The question before the

// Court may hear from the witnesses and consider the evidence. 420 U.S. at 172 8 U.S.C. § 4241 and core right to due process answers this question in the affirmative. The only issue for today is whether Mr. Brockman has a right to a hearing, so that the The express language of Drope,

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based on several reasons, including that the required hearing on his competency should take place where he resides and his doctors are located. Mr. Brockman has also filed a motion seeking to transfer this matter to the Southern District of Texas ECF No. 49

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Counsel for Defendant ROBERT T. BROCKMAN

NEAL J. STEPHENS

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1. I am a member of the bar of the	I, Kathryn Keneally, declare as follows:	DECLARATION OF			Defendant.	ROBERT T. BROCKMAN,	v.	Plaintiff,	UNITED STATES OF AMERICA,	OCHA I I MATO	SAN FRANC	NORTHERN DISTR	UNITED STATES	Attorneys for Defendant ROBERT T. BROCKMAN	Facsimile: +1-650-739-3900	Palo Alto, CA 94303 Telephone: +1-650-730-3030	JONES DAY	Vincent Doctor (State Bar No. 319408)	Neal J. Stephens (State Bar No. 152071)	Facsimile +1-832-239-3600			Jason Varnado (State Bar No. 211067)	
am a member of the bar of the State of New York, the United States Supreme		DECLARATION OF KATHRYN KENEALLY		DELENSE	COMPETENT TO ASSIST IN HIS	HEARING TO DETERMINE WHETHER MR BROCKMAN IS	DEFENDANT ROBERT T.	DECLARATION OF KATHRYN	Case No. 3.20-cr-00371-WHA	TOCO DI VIDICIN	SAN FRANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT							Telephone: +1-212-326-3939 Faccimile: +1-212-755-7306	250 Vesey Street New York NV 10281-047	kkeneally@jonesday.com	Kathryn Keneally (appearance <i>pro hac vice</i>) New York State Bar No. 1866250	

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Brockman's Motion For a Hearing to Determine Whether Mr. Brockman is Competent to Assist

Court, and various other federal courts. I am a partner of the law firm Jones Day, counsel for the

I make this Declaration in support of Defendant Robert T.

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defendant Robert T. Brockman.

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in His Defense.

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and criminal tax defense. I am a fellow of the American College of Tax Counsel

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2012 to June 2014, I served as the Assistant Attorney General for the Department of Justice Tax

Division. At all other times, I have been in private practice, focused primarily on tax controversy

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- observations concerning his health and ability to assist in his defense work product protection by this declaration or otherwise. I am not disclosing any below only discussions between Mr. Brockman and me concerning his medical condition, and my communications with Mr. Brockman in which he sought or we provided legal advice. I do not, and do not intend, to waive Mr. Brockman's attorney-client privilege or I disclose
- of a client in understanding the complex and far-reaching allegations at issue in this case. firm belief that Mr. Brockman cannot provide this assistance Based on my professional experience, I know that it is vital to have the assistance It is my
- investigation disease and dementia on July 18, 2019. Mr. Brockman was meeting with Peter J. Romatowski of understand what he needed to know. He did not ask whether this would have any impact on the he may have some difficulty remembering and that he may need to review things several times in our discussions with him. He asked that we address issues with him more slowly, and said that he was surprised by these diagnoses. He said that this may explain why he had some difficulties my firm. I participated in that meeting by conference call. I recall that Mr. Brockman said that I first learned from Mr. Brockman that he had been diagnosed with Parkinson's
- discussion of his medical diagnoses made immediate sense of these experiences provided to him as if he had remembered it rather than having heard it from us. unable to provide us with information as to past events at issue in the then on-going investigation. during the July 18, 2019 conference. By that time, I had observed that Mr. Brockman had been He would forget discussions that we would have, or relate back to us information that we had Unlike Mr. Brockman, I was not surprised by the diagnoses that he described For me, his

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her neuronsychological report in connection with this evaluation which was done on December	23
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additional battery of tests to evaluate Mr. Brockman. Attached hereto as Exhibit O is a copy of	22
administered when asked to provide an opinion in a legal proceeding. She agreed to perform this	21
perform a different battery of tests, that she referred to as forensic tests, which she said she	20
26. When I spoke with Dr. York, she said that as a neuropsychologist she should	19
2020.	18
25. Attached hereto as Exhibit N is a copy of Dr. Yu's letter to me dated January 21,	17
January 14, 2020.	16
24. Attached hereto as Exhibit M is a copy of Dr. Jankovic's letter to me dated	15
2020.	14
23. Attached hereto as Exhibit L is a copy of Dr. Pool's letter to me dated January 14,	13
to the Department of Justice.	12
summarized our discussions, and explained to each of them that I planned to provide these letters	11
22. I asked Dr. Pool, Dr. Jankovic, and Dr. Yu to provide me with letters that	10
access his memories reliably to be able to assist in his defense.	9
who are all medical doctors, each responded in words to the effect that Mr. Brockman could not	00
dementia would prevent him from assisting with his defense. Dr. Pool, Dr. Jankovic, and Dr. Yu	7
21. I asked each of the doctors for his or her opinion as to whether Mr. Brockman's	6
experience in working with Mr. Brockman.	5
information that I learned in my discussions with these doctors resonated fully with my	4
understand their medical reports and information generally about each of their diagnoses. The	ω
criminal investigation by the U.S. Department of Justice. I asked questions to help me better	2
20. I explained to each of the doctors that my firm represented Mr. Brockman in a	_

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9 7 6 S 4 S 2 the call, I obtained waivers pursuant to the Health Insurance Portability and Accountability Act available to be examined by a doctor of the government's choosing. reaching any decision whether to seek an indictment. We offered to make Mr. Brockman witnesses for any interviews, nor would we require that defense counsel be present. Following government interview Mr. Brockman's doctors. I volunteered that we would not prepare these consider Mr. Brockman's inability to assist in his defense, and to investigate this issue before dated April 9, 2020. In a telephone conference on April 23, 2020, we urged the prosecutors to interviews ("HIPAA waivers") from Mr. Brockman, which I forwarded to the government to facilitate any We asked that the

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opportunity of Mr. Brockman's scheduled examination to get updated evaluations of his cognitive or to respond to my inquiries had diminished noticeably. I concluded that we should take the examination with Dr. Pool. By this time, based on my experience in speaking with Mr. Brockman, it was my perception that his ability to understand the information that I provided 29. In September 2020, I learned from Mr. Brockman that he had scheduled his annual

conduct of the doctors, I wanted them to know that I would be speaking again with Dr. Pool and would attend an arraignment to be scheduled on the following Thursday, October 15, 2020. which I later learned is dated October 1, 2020, and they asked for assurance that Mr. Brockman Saturday, October 10, 2020. During that call, they disclosed that there was a sealed Indictment, Dr. York. The prosecutors next contacted me by email on Friday, October 9, to arrange a call for in light of my commitment not to interfere with any interviews that the government may want to him to Dr. York for an updated evaluation, and to follow up with both doctors. I explained that, Mr. Brockman would again be examined by Dr. Pool, and that I planned to ask Dr. Pool to refer 30. I spoke with the lead prosecutors on September 30, 2020. I let them know that

HIPAA waivers October 21, 2020, I informed the prosecutors by email that Mr. Brockman had revoked the doctors. None of them had been contacted by the government prior to the Indictment. Following Mr. Brockman's arraignment, I spoke again with each of the four

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EXHIBIT A

From: Bob Brockman[bob_brockman@rayrey.com] Document 64-2 Stuart Yudofsky stuart. Yudofsky @gmail.com] Document 64-2 Thur 5/4/2017 12:27:18 AM (UTC) Filed 12/08/20 Page 2 of 108

Subject:

Good evening, Bob:

There are dozens of potential causes of anosmia--as there are for memory loss

person, and/or system--for assessment and, as required, care. significance of your memory symptoms, as well as utilize this information to direct you to the best professional-- discipline, If you are comfortable doing so, I suggest that you begin by meeting with me. That will help me assess the severity and

Asyou know, Bob, I am a neuropsychiatrist and have extensive hands-on experience with memory and cognitive changes.

wækend. I an available in the mornings from 9 AM until noon over the next several days, and can be available at any time over the

Please let me know how you would like to proceed

Warmest regards,

on 01/04/21

Stuart,

OppMay 3, 2017, at 4:27 PM, Bob Brockman < bob brockman@reyrey.com > wrote:

smell. Robert and Dorothy are after me to consult with the right doctor regarding my loss of my sense of

They are afraid that it is an early sign of alzheimer's or dementia.

I am feeling good but am having increasing memory problems

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Is there a doctor that you can recommend?

Bob

EXHIBIT B



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Seth Paul Lerner, M.D., FACS

Professor 713-798-4001

Request Clinical Appointment

Case 4:21

Email

slerner@bcm.edu

Positions

Baylor College of Medicine

Houston, TX US

Multidisciplinary Bladder Cancer Program Beth and Dave Swalm Chair in Urologic Oncology Director of Urologic Oncology Director of the

Addresses

Baylor College of Medicine Medical Center (Clinic)

7200 Cambridge, Suite 10B

Houston, TX 77030

United States

(713) 798-4001

Education

B.A. from University Of Texas At Austin

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01/1979 - Austin, TX United States

M.D. from Baylor College Of Medicine

01/1984 - Houston, TX United States

Internship at Virginia Mason Hospital

01/1985 - Seattle, Washington United States

Residency at Virginia Mason Hospital

06/1986 - Seattle, Washington United States

General Surgery

Residency at Baylor College of Medicine

06/1990 - Houston, Texas United States

Urology

Fellowship at University Of Southern California

06/1992 - Los Angeles, California United States

Urologic Oncology

Certifications

American Board of Urology

Professional Interests

Urologic Oncology and Reconstructive Surgery with Interest in Minimally Invasive Surgery

Professional Statement

Director for the Urology Clinic Oncology and the Multidisciplinary Bladder Cancer Program and Faculty Group Practice Medical Oncology, in the Scott Department of Urology, Baylor College of Medicine. He is Director of Urologic Seth P. Lerner, MD, is Professor of Urology and holds the Beth and Dave Swalm Chair in Urologic

particularly lower and upper tract urothelial cancer. surgery under Peter Jones and Don Skinner before returning to join the full-time Baylor faculty in two-year fellowship at the University of Southern California in urologic oncology and reconstructive Virginia Mason Hospital in Seattle, and returned to Baylor for his residency training. He completed a He earned his medical degree from Baylor College of Medicine, completed a surgical internship at His clinical practice, education, and research activities are devoted to urologic oncology and

NCI Bladder Cancer Task Force and current co-chair of the NCI CTEP Genitourinary Steering including chair of the Local Bladder Cancer committee of SWOG, founding and former co-chair of the cystectomy. He is active in the leadership of several national bladder cancer research enterprises Phase III trial comparing extended vs. standard pelvic lymphadenectomy at time of radical investigator for both NCI and industry funded clinical trials. He is the PI of the ongoing SWOG NCI radical cystectomy and pelvic lymphadenectomy. He has 26 years experience as a clinical therapy, integrated genomic analysis of bladder and upper urinary tract cancers, and outcomes of interests include use of selective estrogen receptor modulators for treatment of bladder cancer, gene and directs the multi-disciplinary Bladder Cancer Research Program at Baylor and his research Bladder Cancer. He is the founding co-editor-in-chief of the Bladder Cancer journal. He established Dr. Lerner is author of over190 peer-reviewed articles, and co-editor of a comprehensive Textbook of Committee, and he has co-chaired the Analysis Working Group of The Cancer Genome Atlas Project

Websites

Scott Department of Urology

Dr. Lerner's Research

VIICTR Research Database

BCM MyChart

Selected Publications

• Levitt JM, Jian W, Lerner SP, Sonpavde G "A conventional preclinical schedule of cisplatin is more effective than a metronomic frequent bolus schedule for urothelial carcinoma.." Urol. Oncol. 2013 February; 31 (2): 234-40. Pubmed PMID: 21723160

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- Burke JM, Lamm DL, Meng MV, Nemunaitis JJ, Stephenson JJ, Arseneau JC, Aimi J, Lerner S a GM-CSF Expressing Oncolytic Adenovirus, for the Treatment of Nonmuscle Invasive Bladder Cancer.." J. Urol.. 2012 December; 188 (6): 2391-7. Pubmed PMID: 23088985 Yeung AW, Kazarian T, Maslyar DJ, McKiernan JM "A First in Human Phase 1 Study of CG0070,
- Meeks JJ, Bellmunt J, Bochner BH, Clarke NW, Daneshmand S, Galsky MD, Hahn NM, Lerner SP, Mason M, Powles T, Sternberg CN, Sonpavde G "A Systematic Review of Neoadjuvant and (3): 523-33. Pubmed PMID: 22677572 Adjuvant Chemotherapy for Muscle-invasive Bladder Cancer.." Eur. Urol.. 2012 September; 62
- Jian PY, Godoy G, Coburn M, Lynch G, Ro JY, Zhai QJ, Nishino M, Lerner SP "Adenocarcinoma following urinary diversion.." Can Urol Assoc J. 2012 April; 6 (2): E77-80. Pubmed PMID: 22511440

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Memberships

Member

American Urological Association

Member

American Association for Cancer Research

Member

American Association for the Advancement of Science

Member

American College of Surgeons

Fellow

American Medical Association

Member

American Society of Clinical Oncology

Member

American Society of Gene Therapy

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Member

American Association of Clinical Urologists

Member

Harris County Medical Society

Member

International Bladder Cancer Network

Member

Society of Basic Urologic Research

Member

Société International D'Urologie

Member

Society of Laparoendoscopic Surgeons

Member

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Member

Society of University Urologists

Member

Southwest Oncology Group

Member

Texas Urological Society

Member

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Texas Medical Association

Member

Research Interests

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cancers predictive models; genomic characterization and integrated analysis of bladder and upper tract of treatments for non-muscle-invasive bladder cancer and radical cystectomy and development of therapeutics and gene therapy for treatment of non-muscle-invasive and invasive disease; outcome estrogen receptor modulators (e.g., tamoxifen) for treatment of bladder cancer; novel targeted Bladder Cancer Collaborative Research Program: Role of estrogen receptors and the use of selective

Clinical Interests

testis and kidney cancer; Director, Bladder Cancer Multidisciplinary Clinical Program Urologic oncology and urinary tract reconstruction; management of patients with bladder, prostate,

Clinical Trials

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Bladder cancer; prostate cancer; kidney cancer

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James Pool



James L Pool, M.D.

Professor 713-798-5800

Email

Case 4:21

jpool@bcm.edu

Positions

Professor

Houston, TX US Baylor College of Medicine Medicine-Hypertension

James L. Pool Presidential Endowed Chair in Clinical Pharmacology

Houston, Texas United States **Baylor College of Medicine**

Addresses

Baylor Comprehensive Healthcare Clinic (Clinic)

Houston, TX 77030 1977 Butler Blvd. E6.150 (713) 798-0180 United States

Education

MD from University Of Oklahoma School of Medicine

06/1972 - Oklahoma City, Oklahoma United States

Internship at Duke University Medical Center

01/1973 - Durham, North Carolina United States

Internal Medicine

Residency at Duke University Medical Center

01/1975 - Durham, North Carolina United States

Internal Medicine

Fellowship at Duke University Medical Center

01/1976 - Durham, North Carolina United States

Endocrinology

Certifications

American Board of Internal Medicine

Diplomate

American Board of Endocrinology and Metabolism

Diplomate

American Board of Clinical Pharmacology

Professional Interests

- Cardiovascular Pharmacology
- Alteration of Lipid Metabolism by Antihypertensive Drugs
- Autonomic Nervous System Dysfunction

Websites

VIICTR Publications List

Cardiovascular Disease Prevention Care Center

Selected Publications

- Taylor AA, Pool JL "Clinical role of direct Renin inhibition in hypertension.." Am J Ther. 2012 May; 19 (3): 204-10. Pubmed PMID: 21317620
- Pool JL, function in abdominally obese hypertensive patients with impaired fasting glucose.." Clin. Sci.. Perlstein TS, Henry RR, Mather KJ, Rickels MR, Abate NI, Grundy SM, Mai Y, Albu JB, Marks JB, 2012 February 1; 122 (4): 193-202. Pubmed PMID: 21861845 Creager MA "Effect of angiotensin receptor blockade on insulin sensitivity and endothelial
- physician uncertainty reduction intervention on blood pressure in uncontrolled hypertensives-a Hyman DJ, Pavlik VN, Greisinger AJ, Chan W, Bayona J, Mansyur C, Simms V, Pool J "Effect of a cluster randomized trial.." J Gen Intern Med. 2012 April; 27 (4): 413-9. Pubmed PMID: 22033742
- Clement S, Brohan E, Sayce L, Pool J, Thornicroft G "Disability hate crime and targeted violence and hostility: A mental health and discrimination perspective.." J Ment Health. 2011 June; 20 (3):

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Joseph Jankovic



Joseph Jankovic, M.D.

Professor 713-798-6556

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Email

pdcmdc@bcm.edu

Positions

Neurology

Baylor College of Medicine

Distinguished Chair in Movement Disorders

Baylor College of Medicine

Director

Parkinson's Disease Center and Movement Disorders Clinic

Baylor College of Medicine

Director, Centers of Excellence

National Parkinson Foundation

Huntington's Disease Society of America Tourette Syndrome Association

Program Director

Movement Disorders Fellowship

Baylor College of Medicine

Addresses

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Parkinson's Disease Center and Movement Disorders Clinic (Clinic)

Baylor College of Medicine Medical Center

7200 Cambridge St., 9th Floor, MS: BCM609

Houston, TX 77030

United States

(713) 798-2273

Neurology Site

Education

MD from University of Arizona College of Medicine

06/1973 - Tucson, Arizona United States

Internship at Baylor College of Medicine

06/1974 - Houston, Texas United States

Residency at The Neurological Institute, Columbia University

06/1977 - New York, NY United States

Neurology

Certifications

American Board of Psychiatry and Neurology, Neurology

Honors & Awards

Past President

International Parkinson and Movement Disorder Society (01/1994 - 01/1996)

Honorary Member

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Society Neurological Societies French Neurological Society International Parkinson and Movement Disorder American Neurological Association Australian Association of Neurologists European Federation of

Great Teacher Award

National Institutes of Health

Movement Disorders Research Award

Sponsored by the Parkinson's Disease Foundation

American Academy or Neurology

Distinguished Service Award

National Parkinson Foundation

Guthrie Family Humanitarian Award

Huntington's Disease Society of America

Lifetime Achievement Award

Tourette Syndrome Association

Distinguished Service Award

Dystonia Medical Research Foundation

Baylor College of Medicine Alumni Association

Fulbright and Jaworski Faculty Excellence Award

Baylor College of Medicine

Master Clinician Lifetime Award

Baylor College of Medicine

Past President

International Neurotoxin Association (01/2015 - 12/2017)

Professional Interests

- Neurology
- Movement Disorders
- Parkinson's Disease and related neurodegenerative disorders
- Tremors

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- Dystonia
- Tics
- Tourette's syndrome
- Chorea
- Huntington's disease
- Restless leg syndrome
- Tardive dyskinesias
- Paroxysmal dyskinesias
- Ataxia

Professional Statement

Neurology training at Columbia University, New York City, he joined the faculty of Baylor College of Department of Neurology, Baylor College of Medicine, Houston, Texas. After completing his Founder and Director of the Parkinson's Disease Center and Movement Disorders Clinic (PDCMDC), Joseph Jankovic, M.D. is Professor of Neurology, Distinguished Chair in Movement Disorders, and

America, and the Wilson Disease Association.

Parkinson's Foundation, the Huntington Disease Society of America, the Tourette Association of the direction of Dr. Jankovic the PDCMDC has been recognized as "Center of Excellence" by the Huntington disease, restless legs syndrome, tardive dyskinesia, and paroxysmal dyskinesias. Under

neurodegenerative and movement disorders such as tremors, dystonia, Tourette syndrome,

pathophysiology, and experimental therapeutics of Parkinson's disease and related

Medicine in 1977. Since that time he has led clinical and research team that focuses on etiology.

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Tourette Syndrome Association Lifetime Achievement Award, Dystonia Medical Research

Award, and Lifetime Achievement Award from the International Neurotoxin Association, Foundation Distinguished Service Award, Benign Essential Blepharospasm Research Foundation

Dr. Jankovic has published over 1,200 original articles and over 55 books, is included among "Highly

botulinum toxins (http://expertscape.com/). Cited Researchers", and has been ranked #1 expert in the world in movement disorders and in

neurology and movement disorders. mentored numerous fellows and other trainees many of whom have become leaders in the field of Fox Foundation for Parkinson's Research and the National Parkinson Foundation. Dr. Jankovic has medical advisory boards and has served on the executive scientific advisory boards of the Michael J. the Food and Drug Administration. Dr. Jankovic is current or past member of many scientific and on drugs for parkinsonian disorders and hyperkinetic movement disorders has led to their approval by He has served as the principal investigator in hundreds of clinical trials and his pioneering research For further information visit www.jankovic.org

Websites

Parkinson's Disease Center and Movement Disorders Clinic

In the News

Dr. Jankovic's Bibliography

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Dr. Jankovic's Research

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Joseph Jankovic, M.D. - Giving Life to Possible

disease and related neurodegenerative disorders. disorders and Parkinson's disease. His clinical interests include: movement disorders, Parkinson's Joseph Jankovic, M.D. is board certified in psychiatry and neurology specializing in movement

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> Melissa Yu



Melissa Michelle Yu, M.D., FAAN

Associate Professor 713-798-2273

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Positions

Associate Professor

Neurology Baylor College of Medicine

Neurology

Baylor College of Medicine

Associate Director, Clinical Operations

Alzheimer's Disease and Memory Disorders Center

Baylor College of Medicine

Houston, Texas

Faculty Senator

Baylor College of Medicine

Houston, Texas United States

Physician Informaticist

Baylor College of Medicine

Addresses

Baylor Neurology - Alzheimer's Disease and Memory Disorders Center (Clinic)

7200 Cambridge St., 9th Floor

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McNair Campus

Houston, TX 77030

United States

(713) 798-4734

https://www.bcm.edu/healthcare/care-centers/neurology

Education

MD from Mt. Sinai School of Medicine

05/2000 - New York City, New York United States

Internship at St. Luke's-Roosevelt Hospital Center

06/2001 - New York City, New York United States

Internal Medicine

Residency at Baylor College of Medicine

06/2004 - Houston, Texas United States

Neurology

03/2014 - Houston, Texas United States **Graduate Certificate at Jesse** H. Jones **Graduate School of Management of Rice University**

Healthcare Management

Graduate Certificate at University of Texas, School of Biomedical Informatics

12/2016 - Houston, Texas United States

Healthcare Informatics

Certifications

Neurology

American Board of Psychiatry and Neurology

Clinical Informatics

American Board of Preventive Medicine

Professional Interests

- Memory disorders
- Healthcare Management
- **Electronic Medical Records**
- Process Improvement
- Quality Improvement
- **Healthcare Informatics**

Memberships

American Academy of Neurology

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a Person > Michele York



Michele K York, Ph.D., ABPP-CN

Professor 713-798-8673

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Case 4:21

Email

myork@bcm.edu

Positions

Professor

Neurology and Psychiatry and Behavioral Sciences
Baylor College of Medicine

Head

Section of Neuropsychology Baylor College of Medicine

Addresses

Baylor College of Medicine Medical Center (Clinic)

7200 Cambridge St., 9th Floor Houston, TX 77030 United States (713) 798-8673

Education

Internship at Baylor College Of Medicine

01/2000 - Houston, Texas United States

Clinical Psychology

PhD from Vanderbilt University

01/1998 - Nashville, Tennessee United States

MA from Vanderbilt University

01/1996 - Nashville, Tennessee United States

BA from Vanderbilt University

01/1993 - Nashville, Tennessee United States

Certifications

Clinical Neuropsychology

American Board of Professional Psychology

Honors & Awards

Fulbright and Jaworski LLP Faculty Excellence Award for Teaching and Evaluation

Baylor College of Medicine (01/2012)

Fulbright and Jawroski LLP Faculty Excellence Award for Enduring Materials

Baylor College of Medicine (09/2012)

Norton Rose Fulbright LLP Faculty Education Award for Teaching and Evaluation

Baylor College of Medicine (09/2018)

Norton Rose Fulbright LLP Faculty Education Award for Enduring Materials

Baylor College of Medicine (01/2019)

Star Award for Clinical Excellence

Baylor College of Medicine (01/2019)

Websites

VIICTR Publications List

Neuropsychology

In the News

Dr. York's Bibliography

Comprehensive list of publications and presentations

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Selected Publications

- Hack N, Akbar U, Thompson-Avila A, Fayad SM, Hastings EM, Moro E, et al "Impulsive and Stimulation Surgery." J Parkinsons Dis. 2014 January 1; 4 (4): 591-8. Pubmed PMID: 25035311 Compulsive Behaviors in Parkinson Study Group (PSG) Centers Performing Deep Brain
- Rothlind JC, York MK, Carlson K, Luo P, Marks WJ, Jr, et al "Neuropsychological changes following deep brain stimulation surgery for Parkinson's disease: comparisons of treatment at

- 2014 September 2; : Pubmed PMID: 25185211
- Fridley J, Adams G, Sun P, York M, Atassi F, Lai E, et al "Effect of subthalamic nucleus or globus pallidus interna stimulation on oculomotor function in patients with Parkinson's disease." Stereotact Funct Neurosurg. 2013 91 (2): 113-21. Pubmed PMID: 23343617
- Calleo J, Burrows C, Levin H, Marsh L, Lai E, York MK "Cognitive rehabilitation for executive dysfunction in Parkinson's disease: application and current directions.." Parkinsons Dis. 2012 2012 : 512892. Pubmed PMID: 22135762

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Memberships

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Academy of Distinguished Educators

Member (01/2012)

American Academy of Neurology

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Movement Disorders Society

International Neuropsychological Society

Parkinson Study Group

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American Congress of Rehabilitation Medicine

Co-Chair Elect (09/2018)

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Intranet

EXHIBIT G

27 23 22 21 20 25 24 19 18 13 17 16 14 12 10 9 ∞ 6 S 4 ω 1 the internal medicine physician at the Baylor College of Medicine, in Houston, Palo Alto, CA 94303 vdoctor@jonesday.com JONES DAY Telephone +1-832-239-3939 Facsimile +1-832-239-3600 Motion to Transfer Proceedings to the United States District Court for the Southern District of I, James L. ROBERT T. BROCKMAN, Attorneys for Defendant ROBERT T. BROCKMAN Facsimile: Telephone: nstephens@jonesday.com Neal J. Stephens (State Bar No. 717 Texas, Suite 3300 Houston, TX 77002 Texas UNITED STATES OF AMERICA Vincent Doctor (State Bar No. 319408) Jason Varnado (State Bar No. 211067) varnado@jonesday.com IONES DAY 755 Embarcadero Road James < 5 Pool, M.D., declare as follows: Pool Presidential Endowed Chair in Clinical Pharmacology +1.650.739.3939 +1.650.739.3900I make this Declaration at the request of his counsel in support of Mr. Brockman's I am a Professor in the Departments of Medicine and Pharmacology and a treating Plaintiff, Defendant DECLARATION OF JAMES L. POOL, M.D. NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT 152071) SAN FRANCISCO DIVISION JONES DAY Telephone: New York, NY 10281-047 250 Vesey Street kkeneally@jonesday.com Facsimile: New York State Bar No. 1866250 Kathryn Keneally (appearance pro hac vice) **BROCKMAN'S MOTION TO** M.D., IN SUPPORT OF ROBERT T. Case No. 3.20-cr-00371-WHA TRANSFER PROCEEDINGS DECLARATION OF JAMES L +1-212-326-3939 +1-212-755-7306 Texas, where I hold

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- Michele K. York, Ph.D., a neuropsychologist, all with Baylor College of Medicine M.D., a neurologist and specialist in Parkinson's disease and other movement disorders; Melissa Yu, M.D., a neurologist and specialist in Alzheimer's Disease and other memory disorders; and I referred Mr. Brockman to three other medical professionals: Joseph Jankovic
- includes, but is not limited to, both short and long term memory loss dementia, and in Mr. Brockman's case, the medical reports confirm cognitive impairment, which may result in rigid muscles, slow movements, and tremors. All are characterized by progressive cannot be totally confirmed except at autopsy. None of these conditions are curable, and each Parkinson's Disease, parkinsonism, Lewy body dementia, or some combination. These diagnoses Their conclusions support that Mr. Brockman presented symptoms that are consistent with Each of these doctors provided me with reports following their examinations
- results of these examinations confirm that Mr. Brockman's impairment is progressive cognitive tests, and again referred Mr. Brockman to Dr. York for a further battery of tests. I examined Mr. Brockman again on October 6, 2020. At that time, I conducted
- term memory inaccessible and defective. respects. These include short term memory limitations. In addition, his condition renders longin his company, able to engage in social conversation, and capable of functioning in familiar that Mr. Brockman cannot assist his attorneys in his defense tasks. However, Mr. Brockman's progressive dementia impairs his cognitive ability in several .7 At this stage, Mr. Brockman may be oriented in time and place, aware of persons For these reasons, I concur with the medical position
- by the medical reports and letters previously provided to them by me, determine that Mr. Brockman cannot assist in his defense, and that this motion will be supported ∞ I understand that Mr. Brockman's counsel will make a motion for a hearing Dr. Jankovic, Dr. Yu, and

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EXHIBIT H

Brockman, Robert Theron

Brockman, Abbert Pheron (NAN 0500937964) DOB 64-2

12/08/24n&daner45aft:161930/2019

MRN: 0300937767

Office Visit 1/30/2019 Primary diagnosis: PD (Parkinson's disease) Provider: Jankovic, Joseph, MD (Neurology)

Neurology Associates Baylor College of Medicine -

Reason for Visit: Movement Disorder; Referred by Pool, James L, MD

Additional Documentation

Vitals: BP 136/79 (BP Location: left arm, Patient Position: Sitting, Cuff Size: regular) Pulse 53

Ht 6' 1" (1.854 m) BMI 25.07 kg/m2 BSA 2.11 m2 More Vitals

Flowsheets: **MDS UPDRS**

Encounter Info: Billing Info, History, Allergies, Detailed Report

Scan on 1/31/2019 9:44 AM by Garcia, Karen, CMA: Montreal Cognitive Assessment (MOCA)

Progress notes

Savitt, Daniel, DO at 2/8/2019 1:50 PM

Author Type: Fellow Status: Addendum

Editor: Savitt, Daniel, DO (Fellow)

PT NAME: Robert Theron Brockman

MRN: 0300937767

INITIAL NEUROLOGICAL EVALUATION: 1/30/2019

REFERRING PHYSICIAN: Pool, James L, MD and Stuart Yudofsky, MD

REASON FOR EVALUATION:

Movement Disorders Clinic at Baylor College of Medicine on 1/30/2019. He presents for evaluation and treatment of Parkinson's disease. We had the pleasure of evaluating Mr. Brockman at the Parkinson's Disease Center and

HISTORY OF PRESENT ILLNESS:

company, who presents for evaluation of possible Parkinson's disease Mr. Brockman is a 77 year old ambidextrous man, the CEO of a computer software

steps and has a stooped posture with walking. There is no freezing and no change in his months ago. Since that time, he has noticed an improvement in his thinking and memory. developed depressive symptoms about 6 months ago for which bupropion was started 2 arm swing. fishing as a hobby and has more difficulty standing even in calm waters. He takes shorter He also noticed difficulty with his balance about 1.5 years ago. For example, he enjoys fly The onset of symptoms began 1.5 years ago with concentration and memory difficulty. He

His handwriting is messier and smaller and for this reason, he has stopped signing He has stiffness when he does not exercise. He is moving more slowly in general as well. employee certificates. He has not noticed a significant tremor. He has some difficulty with

tasks requiring fine motor movements such as buttoning certain buttons and starting the line for his fly-fishing.

Brockman, 986bert Pheron (WKN 0300937969) DODE 14-2

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swallowing food and medications, coughs with swallowing. He has reduction in his hearing speech. He has excessive salivation. For the past 6-8 months, he has had difficulty out his dreams at nighttime 2-3 years ago, kicking and punching in his sleep. He generally resolved with stool softeners. He does not have hypophonia but his wife notices slower incontinence or retention. He had constipation when he started Cardizem 2.5 years ago, that melatonin. He has increased urinary frequency (he goes hourly) and urgency but without sleeps well, although recent work stress has disrupted his sleep and he now takes He has developed near absence of sense of smell about 10 years ago. He also began acting but does not want to wear hearing aids.

these symptoms. He has never been prescribed antiemaetics or antipsychotics and has never been treated for

DIAGNOSTIC TESTS:

MRI brain (11/2/19): Unremarkable

RESPONSE TO TREATMENT:

None

ALLERGY: No Known Allergies

 Testosterone (ANDROGEL) 50 Place onto the skin. MG/5GM GEL 	(MULTIVITAMIN ADULT OR)	Multiple Vitamins-Minerals	MCG tablet	 levothyroxine (SYNTHROID) 75 Take 75 mcg by 	tablet	(VYTORIN) 10-40 MG per	 ezetimibe-simvastatin 		 ELIQUIS 2.5 MG TABS 	MG ER capsule	 diltiazem (DILTIAZEM CD) 120 				SR) 100 MG SR tablet	 buPROPion (WELLBUTRIN 	Medication	Current Outpatient Medications
Place onto the skin.		Take by mouth	mouth daily.	Take 75 mcg by	evening.	mouth every	Take 1 Tab by	TWICE DAILY	TAKE 1 TABLET	mouth daily.	Take 120 mg by	each evening	morning and 100mg	daily. 200mg each	mouth two times	Take 100 mg by	Sig	
																	Dispense	
									2								Refill	

No current facility-administered medications for this visit.

PAST MEDICAL HISTORY:

Past Medical History

Diagnosis

Atrial fibrillation

Date

Basal cell carcinoma

Brockman, 98868-27667619774NV05009379679DODS

- Bladder cancer
- Depression
- **Hypercholesteremia**
- Melanoma
- Ocular migraine
- lasted ~30 minutes
- **Prostatitis**

1980

1/2012

- **Prostatitis**
- Pseudoexfoliation glaucoma(365.52)
- Thyroid disease
- UTI (lower urinary tract infection)

PAST SURGICAL HISTORY:

Past Surgical History:

Procedure

HX BLADDER TUMOR EXCISION

HX DENTAL SURGERY

infected tooth

HX TONSILLECTOMY

Laterality

Date 2006

1945

FAMILY HISTORY:

Heritage: Caucasian

Mother: Diabetes. She had a mediastinal mass that was inoperable (possibly lymphoma) but

deferred treatment.

Father: COPD

There is no family history of Parkinson's disease or tremor.

SOCIAL HISTORY:

Marital Status: Married

Education: 1 year of graduate school

Occupation: CEO/founder of a computer software company

Social History Lives with his wife.

Tobacco Use

Smokeless tobacco: Smoking status: Never Used Never Smoker

Substance Use Topics

Alcohol use:

REVIEW OF SYSTEMS:

GENERAL: The patient denies fevers, chills, weight loss, or weight gain.

EYES: The patient denies dry eyes, blurry vision, double vision, or vision loss.

EARS/NOSE/THROAT: The patient denies hearing loss, voice changes, rhinorrhea, dry

mouth, or sore throat.

lightheadedness. CARDIOVASCULAR: The patient denies chest pain, palpitations, irregular heartbeat, or

RESPIRATORY: The patient denies cough, shortness of breath, or asthma

or reflux. The patient denies nausea, vomiting, diarrhea, constipation, bowel incontinence, ulcers,

HEME: The patient denies anemia, easy bruising, easy bleeding, or a clotting disorder. **DERMATOLOGIC:** The patient denies rash, suspicious lesions, or change in skin color. **ENDOCRINE:** Patient denies heat or cold intolerance, hair loss, diabetes, or thyroid problems. GU: The patient denies bladder incontinence, dysuria, urinary urgency, or frequency

swelling, or muscle aches. MUSCULOSKELETAL: The patient denies joint or back pain, joint swelling, arthritis, ankle

abnormalities. weakness, or sexual dysfunction. The patient has stiffness, gait imbalance, and hearing NEUROLOGIC: The patient denies tremor, headaches, seizures, strokes, paresthesias, bipolar disorder, OCD, ADD, ADHD. **PSYCHIATRIC:** The patient denies hallucinations, delusions, insomnia, or a history of The patient has depression, anxiety, and memory loss.

PHYSICAL EXAMINATION:

Sitting

Vitals

01/30/19 0911

BP Location: left arm 136/79

Position: Patient Sitting

Pulse: Cuff Size: regular

Height: 6' 1" (1.854 m)

General: The patient is well appearing and in no distress.

Skin: No rashes.

HEENT: Normocephalic and atraumatic

Neck: Supple to palpation.

Cardiovascular: Regular rate and rhythm.

Lungs: Clear to auscultation bilaterally.

Peripheral Vascular System: No edema and normal distal pulses.

Abdomen: Nontender, soft.

Extremities: No cyanosis or edema

Visual: No visual field abnormalities.

Psychiatric: There is appropriate mood and affect

Musculoskeletal: No arthritic signs.

NEUROLOGICAL EXAMINATION:

within the distribution of the fifth cranial nerve. No facial asymmetry or dysarthria. Hearing nystagmus or abnormal saccades. There are no square-wave jerks. Normal light touch No evidence of Kayser-Fleischer rings. Ocular movements are full with no evidence of A MoCA examination was administered and the patient received a score of 19/30. right/left disorientation, ideomotor or constructional apraxia, or evidence of ADHD or OCD. delusions, or illusions. **Mental** Status: The patient is alert and oriented to person, time, and place. Speech is fluent with good comprehension. There are no abnormal perceptions, hallucinations, is normal to finger rub bilaterally. full. Non-dilated funduscopic examination revealed normal retinal and vascular anatomy Cranial Nerve Examination: Pupils are equal, round, and reactive to light. Visual fields are The patient is able to follow three-step commands. There is no Tongue and palate are in the midline. 5/5 trapezius

Brockman, ARBbert Pheton (MRN 0300937964) DOB 94-2

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Rigidity: 2+ in each leg

Bradykinesia: Mild bradykinesia worse on the right

Involuntary Movements: There is no evidence of myoclonus, tics, chorea, or dystonic

Tremor: 2+ kinetic tremor and 1+ postural tremor in each arm.

jerks. Plantar response is flexor. Reflexes: 2/4 and symmetric in the biceps, triceps, brachioradialis, quadriceps, and ankle

extremities. Sensation: Normal to joint position, temperature, light touch, and vibration in all the

evidence of dysdiadochokinesis with rapid alternating movements. Coordination: The patient has normal finger-nose-finger and heel-to-shin. There is no

Romberg is normal. There is 1+ postural instability. There is reduced stride length, stooped posture, absent arm swing and en bloc turning Gait, Balance and Posture: The patient is able to arise from a chair without hesitation

Rating Scales: MDS- UPDRS was completed in the electronic chart.

micrographia, anosmia, and dream-acting behavior (REM-Behavioral Disorder). He had an water while fishing. He has also noticed slowness of movement, difficulty with dexterity steps, stooped posture, and more difficulty maintaining balance, especially when standing in software company, who presents for evaluation of Parkinson's disease. The onset of fibrillation hypertension, and hyperlipidemia examination are consistent with the diagnosis of postural instability gait difficulty (PIGD) type symptoms began 1.5 years ago with walking and balance difficulty. He developed shorter IMPRESSION: Mr. Brockman is a 77 year old ambidextrous man, the CEO of a computer body predominant symptoms and presence of vascular risk factors that include atrial Parkinson's disease. Vascular parkinsonism is also a possible consideration given his lower 19/30, 2+ leg rigidity, mild bradykinesia, and a parkinsonian gait. His history and MRI brain in 11/2018 that was unremarkable. His examination is significant for a MoCA of

RECOMMENDATIONS:

- with the patient and his wife. The diagnosis of Parkinson's disease or possible vascular parkinsonism was discussed
- An information packet was provided about Parkinson's disease
- The following tests were requested:
- parkinsonism and idiopathic Parkinson's disease. DaTscan to evaluate for dopaminergic deficiency and differentiate between vascular
- Has appointment scheduled for neuropsychiatric testing.
- Will place referral to Stromatt driving evaluation due to concerns for safety with driving
- We prescribed the following medications and treatments:
- instructions were provided. Start carbidopa/levodopa 25/100 and titrate to 2 tablets three times daily. Written titration
- We would like to see the patient for follow-up in 4 months

treatment. We discussed with the patient the indications and potential side effects of the prescribed

I personally interviewed and examined the patient, and agree with the above report. It has been our privilege to evaluate this patient

This report was electronically signed by:
Joseph Jankovic, M.D./ Daniel Savitt, D.O.
Professor of Neurology/ Movement Disorders Fellow

Joseph Jankovic, MD Professor of Neurology

Brockman, Robert Pheton (WKN 0300939964) BOB

Filed 12/08/24 Reading 48 At 1013 0/2019

Director, Parkinson's Disease Center Distinguished Chair in Movement Disorders

and Movement Disorders Clinic

Baylor College of Medicine

Department of Neurology

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7200 Cambridge, 9th Floor, Suite 9A

Houston, TX 77030-4202 Tel: 713-798-2273

www.jankovic.org

6620 Main St. Houston, TX 77030 Dr. James Poole

713-798-0180

Houston, TX 77030 1 Baylor Plz #115D Dr. Stuart Yudofsky

713-798-4945

Revision History &

Jankovic, Joseph, MD at 1/30/2019 11:16 AM

Author Type: Physician Status: Signed

Editor: Jankovic, Joseph, MD (Physician)

the fellow, resident, nurse practitioner. Medications sections of the electronic medical record. I agree with the findings as written by I personally saw and evaluated the patient, and reviewed the Vitals, History, Allergies and

JOSEPH JANKOVIC, M.D.

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12/08/24n&aaa65aa61030/2019

Patient Instructions

No questionnaires available.

- 1. We discussed the diagnosis of Parkinson's disease.
- 2. We ordered a DaTscan to evaluate for dopamine deficiency related to Parkinson's disease
- 3. You have been prescribed Sinemet 25/100mg tablets.
- Please call 713-798-7438 if you experience these or other side effects. Please take this medication with food unless otherwise instructed.

 Common potential side effects may include nausea, sleepiness, dizziness, or hallucinations.

	BRKFST	LUNCH	DINNER
WEEK 1	1		1
WEEK 2	1	1	1
WEEK 3	2	2	2

We will also send a referral for an independent driving evaluation.

AVS Reports

Follow-up and Disposition

Return in about 3 months (around 4/30/2019).

Orders Placed

NM DATSCAN BRAIN SPECT (Resulted 2/14/2019)

Medication Changes

As of 1/30/2019 11:27 AM

Take 2 Tabs by mouth 3 times daily ORAL	Added: carbidopa-levodopa (SINEMET) 25-100 MG per tablet	
		Refills
	1/30/2019	Start Date
		End Date

Apixaban

Discontinued or Completed: Apixaban (ELIQUIS OR)

	Refills	Start Date	End Date
Unchanged: ELIQUIS 2.5 MG TABS TAKE 1 TABLET TWICE DAILY	2	8/4/2018	
Discontinued or Completed: diltiazem (CARDIZEM SR) 60 MG SR capsule	IZEM SR) 60 MG	iR capsule	
Discontinued or Completed: doxycycline (VIBRAMYCIN) 100 MG capsule	RAMYCIN) 100 M	G capsule	
Discontinued or Completed: levofloxacin (LEVAQUIN) 750 MG tablet	AQUIN) 750 MG	tablet	
Discontinued or Completed: Metoprolol Succinate (TOPROL XL OR)	inate (TOPROL XI	OR)	
Discontinued or Completed: nitrofurantoin (MACRODANTIN) 100 MG capsule	/ACRODANTIN) 1	00 MG capsule	

Brockman, 48863-2966-009748NV65609399641050664-2

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Visit Diagnoses

PD (Parkinson's disease) G20 Cognitive decline R41.89 RBD (REM behavioral disorder) G47.52

XHIBIT



Board Certified Clinical Neuropsychologist Michele K. York, PhD, ABPP-CN Associate Professor

Department of Neurology

CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Patient Name:

Robert Brockman

77 yr.)

Date(s) of Evaluation: Date of Birth (Age):

Referred by: Evaluation Location:

CPT Code: Referral Question:

03/01/2019

BCM Medical Center, McNair Campus, 9th Floor

James Pool, MD

Differential Diagnosis

96116 (60 mins) 96121 (120 mins) 96136 (30 mins) 96137 (180 mins) 96132 (60 mins)

96133 (180 mins)

BACKGROUND AND REFERRAL INFORMATION

clinical decision making. The following information was obtained during a clinical interview with Mr. Brockman behavioral, and emotional functioning with the aim of informing medical differential diagnosis and facilitating and from available medical records. term memory loss. He was referred by his physician for neuropsychological evaluation of his current cognitive, Mr. Brockman is a 77 year-old, right-hand dominant, Caucasian male with a two to three year history of short-

more tangential. He forgets names of new individual and of familiar locations. He also finds it more difficult to 2 to 3 years. He reported that he is repeating himself, losing possession, and losing his train of thought and is was able to act as a reliable informant. Mr. Brockman reported declines in his short-term memory over the past speech. His speech is slowed and he has slowed response latencies. His decision making is also slowed, and he He has increased difficulties with following directions. His wife noted spelling changes and mild stuttering in his complete tasks. His wife noted that he is clumsy getting out of the car and has hit curbs while driving and parking. Current Concerns and General Condition: Mr. Brockman and his spouse participated in the clinical interview. He has difficulties multi-tasking.

night owl and dozes off during the day. His wife reported that he began to act out his dreams a couple of years behavioral changes, suicidal ideation, and auditory hallucinations. Sleep was described as adequate but he is bug on the testing room floor that was not present to either the examiner or his wife. that he has floaters in his visual fields. He denied visual hallucinations, but it is noted that later he pointed out a ago. He has decreased appetite and has lost weight. His wife noted that he does not speak as much. He reported that he is working too much." He denied anhedonia, depressed mood, heightened general anxiety, personality or Mr. Brockman reproted that he began taking Wellbutrin which has improved his mood. He noted that "It is clear

visual illusion for 20 minutes and then it went away. He was told that he might have had a visual headache. an episode of vision changes in which he saw a bar of color on a spectrum that was moving. He noted he had this exercise. He reported that he was hospitalized for a prostate infection four years ago and pericarditis. He reported the head with a hammer and may have suffered a concussion. He did not lose consciousness surgery, and excision of a melanoma. He reported that when he was in the sixth grade he was hit on the top of evaluated by Dr. Jankovic for his movement disorder. Surgical history is notable for tonsillectomy, cataract but since the medication was increased, she reported that he has increasing clumsiness. He is scheduled to be began taking levodopa one month ago. His wife noted an improvement when he first started on the medication, recurrence, tremor, micrographia, and back problems. He currently has plantar fasciitis, so he is not walking for Medical History: Medical history is remarkable for hypothyroidism, atrial fibrillation, bladder cancer with Case 4:21-cr-00009 Document 1-3 Filed on 01/04/21 in TXSD Page 112 of 771

Brockman, Robert CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Board Certified Clinical Neuropsychologist Michele K. York, PhD, ABPP-CN Associate Professor

Department of Neurology

chart for a listing of his current medications. He is on a large regimen of supplements and vitamins. secondary to his atrial fibrillation. He denied a history of seizures, TIA/stroke, or migraines. Please refer to his or illicit drugs or a remote history of substance misuse/abuse. He quit drinking alcohol two to three years ago trazodone to aid his sleep and reducing his REM Behavior Disorder. Mr. Brockman denied current use of tobacco has been taking bupropion for two months, which has reportedly improved his mood significantly. He is taking history is unremarkable for movement disorders or dementia. Psychiatric history is notable for depression. He

Marketing at The University of Florida. He reported that he was a good student. He is Chairman and CEO of spouse in their private residence. He earned a BA in Business and attended graduate school for one Reynolds and Reynolds Company. Social History: Mr. Brockman has been married for 50 years and they have one son. He currently lives with his

and to be reoriented to task. He perseverated to previous tasks. The examiner needed to be concrete for him to but it was sparse with short phrases. There was no evidence of paraphasias. He evidence a slight stutter at times. clean. He exhibited shuffling and slow gait, slowed motor behavior, and a right hand tremor. His mood was and was accompanied by his spouse who participated in the clinical interview. General appearance was neat and Behavioral Observations: Mr. Brockman was tested during a single session as an outpatient. He arrived on time surprised. His handwriting was micrographic. He saw a bug on the floor of the testing room that was not present. insight into his cognitive problems. During testing, the patient said he was not doing well, but he appeared very surrendering test-taking behavior. His attitude towards the examiner was appropriate and friendly. He lacked understand the task instructions. His processing speed was exremely sloewd. He was cooperative but evidenced He showed moderately decreased ability to follow directions, and he frequently needed repetition of directions lenses) and hearing were adequate for the testing session. Conversational speech was coherent and goal-directed, neutral, and he had a flat affect. He had a masked face. Eye movements were normal. Vision (with corrective The following results are thought to be an accurate estimation of his current cognitive abilities

MEASURES ADMINISTERED

Instrumental Activities of Daily Living Scale (IADLS); Lawton and Brody Physical Self-Maintenance Scale (PSMS) Recognition-Older Adult, Visual Reproduction I, Visual Reproduction II, and Visual Reproduction Recognition); Scale-4th Edition (WMS-IV subtests: Logical Memory II-Older Adult, Logical Memory I-Older Adult, Logical Memory Scale-IV (WAIS-IV subtests: Coding, Digit Span, Information, Similarities, and Visual Puzzles); Wechsler Memory (TOPF); Trail Making Test (TMT subtest: Trails A); Verbal Series Attention Test (VSAT); Wechsler Adult Intelligence Color-Word Interference Test (Stroop subtests: Color, Color-Word, and Word); Test of Premorbid Functioning subtest: Naming); Praxis Examination; Rey Complex Figure Test-Meyers Version; Semantic Fluency Test; Stroop Depression Scale; Hopkins Verbal Learning Test-Revised (HVLT-R); Neuropsychological Assessment Battery (NAB Controlled Oral Word Association Test (COWAT version: FAS); General Anxiety Disorder 7-item Scale; Geriatric Montréal Cognitive Assessment (MoCA); Caregiver Neuropsychiatric Inventory (NPI-Q); Clock Drawing Test; Clinical Interview with patient and his spouse.

(WCST) measures due to cognitive/behavioral problems. Mr. Brockman did not complete the Trail Making Test (TMT subtest: Trails B) and Wisconsin Card Sorting Test

time of the evaluation informant questionnaires were sent home and completed by the patient's spouse. They were not returned by the

Michele K. York, PhD, ABPP-CN
Board Certified Clinical Neuropsychologist
Associate Professor

Associate Professor

Department of Neurology

NEUROPSYCHOLOGICAL FINDINGS

The following clinical descriptors identify performance with the range of Standard Scores (average=100, standard deviation=15) indicated in parentheses. Very Superior (**130), Superior (**120-129), High Average (**110-119), Average, (**90-109), Low Average (**80-89), Borderline (**70-79), and Deficient (**69). For diagnostic purposes, a cognitive deficit is considered a performance score that is **1.5 standard deviations away from the mean in the direction of poor performance compared to the reference group for that measure (i.e., Z-score) based on peers of similar age, gender, and education background as appropriate. This criterian is equivalent to a Standard Score <78, T-score <35, or a Scaled Score of <5).

hands placed accurately, repeating one sentence, and with serial 7's and verbal fluency. one word. He demonstrated difficulties with set shifting, drawing a cube, drawing a clock face with numbers and is below expectation. He was oriented (6/6) and short-term recall was 2/5. He was aided by category cueing for Mental Status: Evaluation of Mr. Brockman's general mental status on the MoCA revealed a score of 19/30, which

a word and then stated he guessed it was two. Mr. Brockman was administered subtests from a measure of pro-rated Full Scale IQ estimate of 87, which is in the low average range. general intellectual functioning (WAIS-IV) and obtained scores ranging from borderline to high average yielding a to read outloud was not a word ("two"). He was able to state the letters, but noted that he did not think that was SS=114), based on single, atypical word reading skills. Mr. Brockman noted that the first word presented for him Intellectual: Premorbid level of intellectual functioning was estimated to be in the high average range (TOPF

speed of color naming were deficient. Mental processing speed for manual code transcription was borderline digits backward, and 2 digits when re-ordering them in ascending sequence. Speed of single word reading and speed and for accuracy. Immediate auditory attention span for digits was low average with 7 digits forward, 3 borderline impaired with 0 errors. impaired. Performance on a simple visual-motor sequencing task requiring scanning and mental tracking was Attention/Concentration: Attention and mental tracking for overlearned verbal sequences was deficient for

task requiring scanning, tracking, and set-shifting was impaired and the task was discontinued was deficient. His abstract verbal reasoning was high average. Performance on a complex visual-motor sequencing Executive: Mr. Brockman's ability to inhibit a dominant verbal response in the face of incongruent visual stimuli

correctly identified, 5 false positive errors were committed, with discrimination accuracy in the deficient range trials was borderline impaired (2, 5, and 6 words per trial), and delayed recall was in the deficient range with 0.0% VR figures during LM immediate recall. Incremental learning for a semantically-categorized word list across 3 learned material was 11.1%. Recognition memory was average (16/23). Mr. Brockman began describing the WMS contextual material was deficient (SS=3). Delayed recall of the stories was deficient (SS=3). Retention of initially retention which falls within the deficient range. On recognition memory assessment, 9/12 target words were Memory: Recall of culturally-based general knowledge was average. Immediate recall of verbally presented

 $\{SS=2\}$. Retention of the initially learned material was 0.0%. Recognition memory was borderline impaired (1/7). Immediate recall of basic geometric figures was deficient (SS=1). Delayed recall of the designs was deficient

with 8 exemplars generated. Language: Lexical fluency was low average with between 9 and 13 words per trial. Semantic fluency was deficient Confrontation naming of pictured objects was average (29/31).

ability to mentally arrange puzzle pieces was low average. Visual-Perceptual: His drawing of a complex geometric design scored in the deficient range. His spatial reasoning Visuoconceptual ability to draw a clock was impaired

Brockman, Robert CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Board Certified Clinical Neuropsychologist Associate Professor

Michele K. York, PhD, ABPP-CN

Department of Neurology

clock was also impaired (CDT=6/10). He drew the clock face but the numbers were drawn in only the right side of was unable to place the numbers accurately and drew a hand to the 10 and the 6 for 10 after 11. His copy of a to command (CDT=3/10). He drew a micrographic clock face. The examiner produced a clock face for him, but he the face and the hand size differentiation was not maintained.

difficulties with concentration, and preferring to avoid social gatherings. endorsed the following, suggestive of within normal limits (GDS=8): boredom, feeling as though something a face valid measure used to assess cognitive, emotional and physical symptoms of depression, Mr. Brockman negative is going to occur, preferring to stay home, worry about the future, declines in memory, poor energy, Mood / Personality: On a self-report measure of anxiety, his responses fell in the mild range (GAD-7=7/21). On

Brockman requires mild aid with his more complex ADLs. ability to complete basic and instrumental activities of daily living. Mr. Brockman reportedly has difficulties with living (IADLs=9/31), most notably housekeeping. Although his wife did not report many functional declines, Mr. self-care ADLs (PSMS=7/30) including ambulation. He requires mild assistance with instrumental activities of daily Activities of Daily Living: His spouse served as the informant completing a questionnaire regarding the patient's

agitation which produces moderate distress distress=11) which produce an overall minimal level of familial distress, with the exception of his depression and apathy, irritability, nighttime behaviors, and changes in appetite with moderate depression (NPI-Q severity=8; symptoms commonly associated with dementia, reportedly observing mild problems with agitation, anxiety, Neurobehavioral: The patient's spouse completed an inventory assessing for the presence of neurobehavioral

SUMMARY AND IMPRESSION

premorbid intellectual functioning in the above average range. His MoCA was 19/30 (total), 6/6 (orientation), and average range of general intellectual functioning (WAIS-IV FSIQ=87), which is a decline from his estimated evaluation of his current neuropsychological, behavioral, and emotional status. He currently operates in the low Mr. Brockman is a 77 year-old, right-hand dominant, Caucasian male who was referred by his physician for agitation which produces moderate distress. appetite, and depression for an overall minimal level of familial distress, with the exception of his depression and distress=11) indicated problems with agitation, anxiety, apathy, irritability, nighttime behaviors, and changes in limits (GDS=8). 2/5 (short-term recall), which was significantly below expectation. Self-report of depression was within normal Self-care ADLs (PSMS) were 7/30 and instrumental ADLs were 9/31. The NPI-Q (severity=8:

abstract reasoning, verbal fluency and naming, within the low average to average ranges on measures of basic attention, fund of information, verbal and visual visuoconstruction. Praxis was impaired for intransitive praxis tasks. These impaired performances were found semantic fluency, executive functions (set shifting, inhibition, working memory, and problem solving), and attention/concentration, learning and recall of prose material and a word list, learning and recall of visual material, Mr. Brockman demonstrated borderline impaired to deficient performances on measures of sustained

by deficits in the areas of visuospatial functioning, verbal and nonverbal episodic memory, and executive This pattern of neuropsychological performance indicates a dementia of mild to moderate severity characterized functioning, with mild functional declines. movement disorder. However, he demonstrates movements that may be consistent with a Parkinsonism. These To my knowledge, Mr. Brockman has not been diagnosed with a

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CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION Brockman, Robert

Michele K. York, PhD, ABPP-CN
Board Certified Clinical Neuropsychologist
Associate Professor

Department of Neurology

potential visual illusions, and REM Behavior Disorder, his pattern of cognitive impairments is consistent with abnormal movements taken together with his current diagnosis of dementia, new onset visual hallucinations and Dementia with Lewy Bodies.

RECOMMENDATIONS

General:

- Mr. Brockman and his family should receive feedback regarding his current level of cognitive functioning.
- Continued pharmacologic treatment of his depression appears warranted
- hallucinations on interview, he saw a bug on the floor in the testing room which was not present. Mr. Brockman should be monitored for episodes of visual hallucinations. Although he did not report
- goal of developing appropriate coping strategies, maximization of current strengths to mitigate identified You may wish to consider referring the patient and his family to psychoeducational counseling with the weaknesses, and assist in future life planning.
- Mr. Brockman does not pose a significant safety risk and as such, he should receive occasional supervision occasional review of instrumental activities of daily living to monitor for future changes in his ability status, particularly for medication and personal financial management for self-care ADLs for safety and to monitor for future changes in his ability status. He should also receive

Memory Compensatory Strategies:

- stove/range, irons, food processors, etc.). Using models with automatic shut-off features would be ideal. Mr. Brockman should exercise caution when operating potentially dangerous household appliances (e.g.,
- Mr. Brockman should refrain from cooking activities involving potentially dangerous appliances (e.g., stove, food processor, etc.).
- Reminders application for the iPhone or similar techniques may be helpful. maintaining and organized schedule. Applications such as Google calendar, Remember the Milk, and the The use of a smartphone is recommended for recording important information, setting reminders, and is
- It may be helpful to have a mobile phone or smartphone with him to allow easy access to telephone number he could contact in an emergency or when he cannot recall this information.
- maintaining better temporal orientation. Placing a large-type calendar or clock that includes the date in a highly visible location may assist him in
- whereabouts of his spouse/family members, their time to return, or important telephone numbers. where important information can be posted such as the date, the day's or week's schedule, the The patient may benefit from the placement of a large dry-erase board in a prominent spot in the home
- recall in a written format when possible to allow him to refer to and review the information as necessary. The patient's family may wish to consider presenting important information that Mr. Brockman needs to
- minder, and "to do" lists whenever possible to mitigate common, everyday memory failures. events. He is also encouraged to use external memory aids such as shopping lists, calendars, timers, a pill failures regarding lost objects and to reduce anxiety and misattributions regarding the occurrence of these place personal items such as his keys, checkbook/wallet, glasses, etc. to help prevent future memory Mr. Brockman and his family should consider establishing a 'memory station' where he would consistently
- attentional resources is another possibility. In this way, a large task can be achieved a little at a time over such as financial management. Breaking tasks down into more manageable units to prevent overtaxing To the extent possible, he should try to avoid distracting environments when performing detailed tasks week instead of an overwhelming task all in one evening, for instance

Brockman, Robert CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Case 3:20-cr-00371-WHA

Document 64-2

Filed 12/08/20

Page 58 of 108

Board Certified Clinical Neuropsychologist Michele K. York, PhD, ABPP-CN

Department of Neurology Associate Professor

Social Activities and Other Intellectual Stimulation:

- intellectual and physical stimulation to help improve stamina, buoy his mood, and maintain his current level of quality of life. The patient is encouraged to maintain or increase (to the extent safely possible) his current level of
- Mr. Brockman may benefit from engaging in intellectual stimulation such as reading, assembling jigsaw and familiar card or other games (e.g., dominoes, bridge, solitaire, etc.) may also be enjoyable. activities such as www.Lumosity.com or www.happyneuron-corp.com are options as well. Board games puzzles, and other activities such as word search puzzles, crosswords, or Sudoku. Computer-based
- maintenance Regular physical exercise is recommended for its beneficial effects on brain health and cognitive

Driving:

diagnosis of DLB, he should be encouraged to discontinue driving given concerns over his safety, that of Neuropsychological tests are an imperfect predictor of real-world driving abilities; however, given his others on the roadways, and legal liability issues that could arise for the patient should he become deficits in memory, attention/concentration, executive functions, visuospatial abilities, and his recent involved in a motor vehicle crash.

Legal:

If not already in place, a family member should obtain Durable Power of Attorney for healthcare and financial matters

Patient and Caregiver Resources:

- resources for family members of patients with Alzheimer's and other types of dementia The Alzheimer's Association (www.alz.org/texas; 713-314-1314) provides useful information and
- www.HoustonTx.gov/Health/Aging and through the Houston Area Parkinson's Society (hapsonline.org). Mr. Brockman and his family may benefit from community resources for seniors in the Houston area at

changes and to update recommendations rapidly or if he and/or his family have additional concerns) to monitor neuropsychological, mood, and personality Neuropsychological re-evaluation is recommended in one year (or sooner if his condition appears to change The current results will be useful as a baseline to which findings from subsequent evaluations may be compared

have any further questions. Thank you for allowing me to participate in the care of Mr. Brockman. Please do not hesitate to contact me if you

Muchel & York, PhD

Board Certified Clinical Neuropsychologist Michele K. York, PhD, ABPP-CN

verbally confirmed with the patient at the outset of testing N.B. This assessment was conducted as a clinical evaluation and not as a forensic assessment. This fact was

EXHIBIT J

0ct. 29. 2019 3:04PM Brockman, akaber 20her (30) 37R W. 3,098 567) 190 18:4-2

No. 6713 P. 3 Filed 12/08/20 年取98年8日中中国日的3/20/2019

MRN: 0300937767

Office Visit 3/20/2019 Provider: Yu, Melissa, MD (Neurology)

Neurology **Baylor College of Medicine** Primary diagnosis: Dementia with Parkinsonism

Reason for Visit: Memory Loss; Referred by Pool, James L, MD

Additional Documentation

BP 135/70 (BP Location: left arm, Patient Position: Standing) Pulse 58

Ht 5' 11.75" (1.822 m) Wt 189 lb (85.7 kg) BMI 25.81 kg/m² BSA 2.08 m² More Vitals

Flowsheets: Mini-Mental State

Encounter Info: Billing Info, History, Allergies, Detailed Report

Communications

Chart Routed to Pool, James L, MD

Media

Scan on 3/19/2019 9:30 AM by Hudson, Kendra: ADMDC Packet

Scan on 3/20/2019 2:35 PM by Seedanee, Demonica: Clocks

Progress notes

Yu, Melissa, MD at 3/20/2019 4:58 PM

Author Type: Physician Status: Signed

Editor: Yu, Melissa, MD (Physician)

Consult requested by: James L Pool, MD

Suite E6,150 1977 Butler Blvd

Houston, TX 77030

Chief Concern:

Chief Complaint

Patient presents with

Memory Loss

his husband and his son. Robert Theron Brockman is a 77 y.o. male who presents for evaluation of memory loss with

Orthopedics progress note scanned into the chart. Memory loss is reported beginning at least back to November 2017 in a Fondren

tremor was noted as well as reduced arm swing and stride length. Parkinson's disease was about 10 years, and dream enactment behavior for the past 3 years. history of cognitive difficulty along with balance difficulty. Anosmia was noted dating back He was recently seen in the PDMDC by Dr. Jankovic at which time he reported a 1.5 year Increased tone and

Oct. 29, 2019

He was started on sinemet with motor improvement and started on Exelon patch on 3/13 suspected and DATSCAN was performed showing significant loss of dopaminergic signal

obvious about 9 months ago associated with a stressful life event. His son notes that he repeats himself at times. He reports mild progression since that time. symptoms about 3 years ago with "slowing down" and then symptoms became much more memory." He reports onset of symptoms about 2 years ago. His wife reports some He now presents for memory disorders evaluation. He reports always having "superior

tasks at work, family notes that he doesn't initiate activity like he used to trouble managing finances. He never cooks. He notes some difficulty with planning out No driving incidents were reported but his wife notes that he drives slower. He reports no remembering to take his medications. He has stopped driving at his physician's request. with spelling. He reports minimal difficulty with names. He reports some difficulty He reports always misplacing objects. He reports minimal word finding issues but difficulty

"blankness" associated with less interaction alternating with improved cognition. His son notes significant fluctuations in terms of his decision making abilities, with good days and bad ability fluctuates (he's had him draw clocks at various times). He reports episodes of notes feeling shaken about his neuropsychological test results. He lost his sense of smell about 10 years ago. He describes his mood as "pretty good" but His son reports he's not as angry as he used to be. His son reports that his

diltiazem. He sleeps 7-8 hours/night. refreshed. He does not nap. His family notes he has been more fatigued since being on reported and snoring - both have improved with trazodone. He reports awakening feeling The patient reports good sleep. At least four episodes of dream enactment behavior is

hallucinations are reported. hallucination during neuropsychological testing - wife notes it was a "bad day". No auditory years ago. No other visual phenomena are reported with the exception of a possible He reports one episode of visual disturbance - saw a rainbow/possible visual aura about 8

some decline in his handwriting and family notes micrographia and decreased facial expression. He reports no sensory changes with the exception of mild tingling in two toes reports no fails. He reports urgency and frequency of urine but no incontinence. He reports Motor symptoms began a few years ago with a stooped posture noted by his son also noted increased tone in his back. His gait began to deteriorate in July 2018. No visual agnosia is reported.

minimal side effects except feeling spacy at times. to two tabs TID led to more cognitive decline but family reports he seems to have stabilized in this regard. Cognitively he has improved some with the Exelon patch as well. He reports Gait symptoms improved some with levodopa, particularly on one tab TID. Increase in dose

Past Neurological History:

dealership software company. History of Learning Disability: absent. BS Business. CEO and owner of large automotive

Previous diagnosis of neurological disease: Illness which could affect mentation: None

History of head injury: None

History of visual symptoms: as above

History of hearing symptoms: Decreased Acuity Both. Date of onset: uncertain

History of abnormal movements: None

Oct. 29. 2019 3:06PM Brockmandasabergobergoogy RNNAAAO9B7767ABAB

2/08/20

No. 6713 ნოგცოფლიტოდ805/20/2019

Past Medical History:

Past Medical History:

Diagnosis Atrial fibrillation

> 2016 Date

Basal cell carcinoma

Bladder cancer

Depression

Hypercholesteremia

Melanoma

Ocular migraine

lasted ~30 minutes

Prostatitis

1/2012

1980

Prostatitis

Pseudoexfoliation glaucoma(365.52)

Thyroid disease

UTI (lower urinary tract infection)

Past Surgical History:

Past Surgical History:

Procedure

Laterality Date

2006

 HX BLADDER TUMOR **EXCISION**

HX CATARACT REMOVAL

HX DENTAL SURGERY infected tooth

HX TONSILLECTOMY

1945

Allergies:

No Known Allergies

Medications:

buPROPion (WELLBUTRIN SR) 100 MG SR tablet

carbidopa-levodopa (SINEMET) 25-100 MG per tablet

diltiazem (DILTIAZEM CD) 120 MG ER

ELÍQUIS 2.5 MG TABS

ezetimibe-simvastatin (VYTORIN) 10-40 MG per tablet

tablet levothyroxine (SYNTHROID) 75 MCG

rivastigmine (EXELON) 4.6 MG/24HR

Take 100 mg by mouth two times daily evening
Take 2 Tabs by mouth 3 times daily. 200mg each morning and 100mg each

Take 120 mg by mouth daily.

Take 1 Tab by mouth every evening. TAKE 1 TABLET TWICE DAILY

Take 75 mcg by mouth daily

thereafter month then increase to 2 patches Apply 1 patch to skin every 24 hrs x 1

Testosterone (ANDROGEL) 50 MG/5GM Place

onto the skin

2/08/20

No. 6713 F18981881 6713

0ct. 29. 2019 3:06PM Brockmandesobertoocertriv034FLV043409B7767hDAPE:

trazodone (DESYREL) 50 MG tablet Take 1 Tab by mouth at bedtime.

Social History Social History:

Tobacco Use

Smoking status: Never Used Never Smoker

Smokeless tobacco

Substance Use Topics

Alcohol use:

Comment: none for 3 years, previous occasional heavy drinking (not regularly) Frequency: Never

Drug use:

Occupation: As above

Marital Status: Married, one son who is Neuroscience graduate student

Family History:

Age of Onset

Problem Family History

Relation

Name

 Lymphoma Mother

· COPD Father

Other (aspergers)

Brother

Neurological disorders: as above

Review of Systems: see health assessment - reviewed with patient

Constitutional: No weight change, fever, chills, fatigue

Eyes: No diplopia, blurry vision, dry eyes, cataracts, macular degeneration except history of

cataract removal

ENT: No headache, sinus issues, hearing loss, tinnitus, dry mouth, vertigo except loss reported hearing

Cardiovascular: No chest pain, tachycardia, bradycardia. Reports history of angina

Respiratory: No difficulty breathing

No abdominal pain, constipation/diarrhea, nausea, incontinence

GU: No pain on urination, incontinence, kidney stones. Reports history of bladder cancer,

occasional incontinence

Skin/Teg: No rash, lacerations, easy bruising. Reports history of basal cell CA and

Musculoskeletal: No significant neck or back pain, history of arthritis, broken bones except melanoma.

Psychiatric: No anxiety, reports history of depression

history of osteopenia and arthritis

Endocrine: No thyroid abnormalities, DM except reports hypothyroidism on synthroid

Immunologic: No recent infections

Hematologic: No anemía, transfusions

Neurologic: See above

Vital Signs:

/08/20

No. 6713 F18981841-04410805/20/2019

140/73 left arm left arm

Location:

Patient Sitting

Standing

Pulse: Position:

Weight: S

Height: 189 lb (85.7 kg) 5' 11.75" (1.822 m)

General Physical Examination:

Gen: Well developed, well nourished in no apparent distress. Awake and alert.

Neck: supple, full range of motion. No carotid bruits

Cardiac: Rate and rhythm regular without any murmurs and with normal S1 and S2 sounds

Chest: clear to auscultation, no wheezes, rales or rhonchi, symmetric air entry

Abdomen: soft, nontender, nondistended, no masses or organomegaly

Extremities: no pedal edema

Skin: Intact

NEUROLOGICAL EXAMINATION:

(120 mins post levodopa)

MMSE 26/30 (7s), 25/30 (spelling) Definite visual issues noted with significant issues noted

drawing clock and intersecting pentagons.

Clock drawing 2/4 (circle, numbers, unable to indicate correct time. Numbers on outside of

General behavior: cooperative. Repetitive

Deficit Anosognosia: Minimizes

Judgement: fair, estimated from: history and observation

Apraxia: absent

Speech: Spontaneous speech: normal

Comprehension: normal

Repetition: norma

Word finding difficulty: present

Dysarthria: absent

Cranial Nerves

II: Acuity deferred. VFF. Fundus: No papilledema III, IV, VI: PERRL, EOMI, no nystagmus

V1-V3: intact to light touch bilaterally

VII: face symmetric

VIII: diminished to finger rub bilaterally

IX, X: palate elevates equally and symmetrically

XII: tongue movements symmetric and midline. No fibrillations or atrophy. 0ct. 29. 2019 _ 3:07PM Brockman, Jesphert Ober (2003) 18 IN W 3 A 0 9 B 5567 H BARE:

2/08/20

No. 6713 P. 82019

General Motor Survey

Posture: stooped

Tone: increased in BUE with distraction

Atrophy: absent

Motor Examination

Power 5/5 throughout.

Deep Tendon Reflexes

Left 2+	Right 2+	DTRs Bic
2+	2+	Tric
+2	2+	BR
1+	1+	Pat
+	1+	Ankle
flexor	flexor	Babinski

Abnormal reflexes: glabellar and snout and jaw jerk

Sensory Examination

Joint Position: √ibration: Normal in both legs except in the toes bilaterally Normal in both legs except decreased in the toes bilaterally

Pinprick: Light Touch: Normal in all 4 extremities Normal in all 4 extremities

Coordination

Finger to nose: mild action tremor noted bilaterally

Heel to shin: Normal bilaterally

Movement:

Bradykinesia: slow rapid alternating movements noted bilaterally, more pronounced

on left. Hypomimia and mild bradyphrenia noted

Other abnormal movements: Single myoclonic jerk (trunk) noted during examination Tremor: no rest tremor noted. Mild postural tremor noted in left more than right hand

Gait and Station

turning noted Gait and posture: stooped posture with minimal arm swing, short steps with en bloc

Romberg testing: Normal

Posture: significant postural instability noted with minimal stimulus

Able to rise from chair without use of arms

Review of Medical Records:

areas of visuospatial functioning, verbal and nonverbal episodic memory and executive functioning, with mild functional declines. Parkinsonism combined with dementia, new onset with dementia with Lewy Bodies. visual hallucinations, potential visual illusions and REM Behavior disorder are consistent Neuropsychological testing (3/1/19, York): *IMPRESSION*: Pattern indicates a dementia of mild to moderate severity with deficits in Driving cessation recommended

Prior labs:

Normal: RPR, HIV, homocysteine, CMP, folate, B12, lipid panel, MMA, D, SPEP, A1C TFTs, CBC, ESR

MRI of the brain 11/2018

No. 6713 P. 9 1821<mark>-2 Filed 12</mark>/08/20 **ந்தைவது சென்8**803/20/2019

Reviewed by me: Mild generalized atrophy, two microhemorrhages in left frontal lobe No intracranial abnormalities, particularly no disproportionate lobar atrophy

DATSCAN 1/2019:

on the right compared to the left Severe loss of dopaminergic neuronal function in the bilateral dorsal striata with loss greater

Reviewed by me: Agree

Physician Estimate of symptom duration (derived using ADMDC methods): At least 3 years

Impression:

with dementia. Time course and fluctuations in cognition are more suggestive of DLB vascular burden. Differential includes Dementia with Lewy Bodies or Parkinson's Disease parkinsonism. Imaging demonstrates loss of dopaminergic function without significant changes in gait, worse over the past 9 months associated with a significant life stressor. who presents for evaluation today with a 3 year history of cognitive dysfunction along with Examination is significant for deficits noted on MMSE, visual spatial dysfunction and Robert Theron Brockman is a 77 y.o. male with history of atrial fibrillation and bladder cancer

Flan

Will get ApoE testing for completeness. Discussed lifestyle changes and maintenance of physical and social activity. Advised patient on diagnosis of a neurodegenerative disorder I recommended the patient continue the sinemet at the current dose and increase Exelon in the future. Patient will return for follow up in 3 months to review effects of Exelon patch. further with his family. Patient and family will return for a counseling session with Dr. Kenan with cognitive impairment and possible implications on his work and advised he discuss patch to 9.5mg after one month on the lower dose. I recommended a course of PT for balance and gait. Imaging and laboratory data discussed with patient and family at length

90 minutes were spent with patient, >50% spent in counseling and coordination of care including education regarding appropriate evaluation and workup for cognitive disorders

Thank you for the opportunity to participate in the care of your patient.

CC: James L Pool, MD 1977 Butler Blvd Suite E6.150 Houston, TX 77030

Melissa Yu, M.D.
Associate Professor
Department of Neurology
Baytor College of Medicine
Houston, TX 77030

No questionnaires available.

V ...

Patient Instructions

0ct. 29. 2019 3:08PM Brockmancasseserzühermockkrivaaa0957367);DAPB4-2

No. 6713 P. 10 108/20 Бандоникого драгоновоз/20/2019

- After one month, increase the patch to 9.5mg daily (new prescription)
- Go to physical therapy
- Kendra will call you to set up an appointment with Dr. Kenan

Follow up with me is recommended in 3 months to see how you're doing

AVS Reports

2:33 PM	3/20/2019	Date/Time
	After Visit Summary	
	Printed	
	Yu, Melissa, MD	

Follow-up and Dispositions

Return in about 3 months (around 6/20/2019).

Orders Placed

APOLIPOPROTEIN E MUTATION - CARDIAC (Resulted 3/20/2019) AMB REF TO PT EXTERNAL Closed

As of 3/20/2019 2:24 PM Medication Changes

L OR et 3 3/13/2019	Added: rivastigmine 9.5 MG/24HR PT24 5 3/20/2019 Place 9.5 mg onto the skin daily Transdermal	Refills Start Date End Date
------------------------	--	-----------------------------

Visit Diagnoses

Dementia with Parkinsonism G31.83, F02.80

EXHIBIT K

Patient ID: 0300937767 BROCKMAN, ROBERT DOB: Age: 78 Gender: M Date: October 01, 2019

SCORE	TODAY	CLOCK DRAWING: TODAY
3-WORD MEMORY	0	
ORIENTATION	0	11 2
SEQUENCE MEMORY	4	7
TIME	2	67/69
TOTAL SCORE	12	
-aț		

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98% had dementia. patients in this score range had normal cognition, 2% had Mild Cognitive Impairment (MCI), and Disorder, moderate (formerly Moderate Dementia). In our research database of 3500 patients, no patients of this age and educational level and is typically associated with Major Neurocognitive community observer. This patient has received a score of 12 of 29 points. This score falls below the cutoff for dementia in Test Results

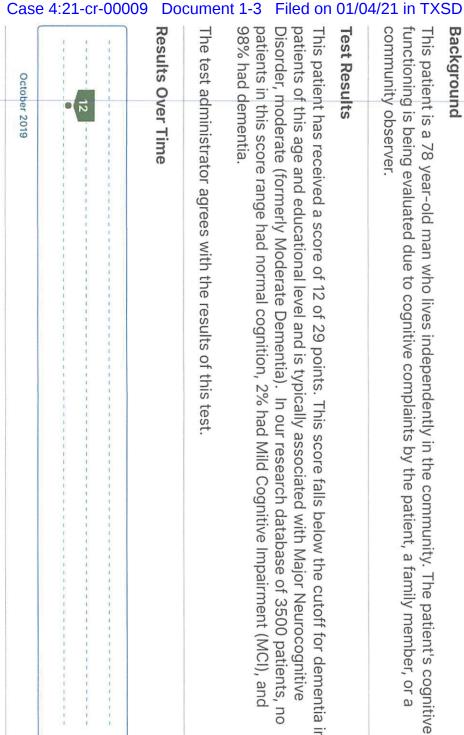
functioning is being evaluated due to cognitive complaints by the patient, a family member, or a

This patient is a 78 year-old man who lives independently in the community. The patient's cognitive

Background

The test administrator agrees with the results of this test.

Results Over Time



Plan

No plan.

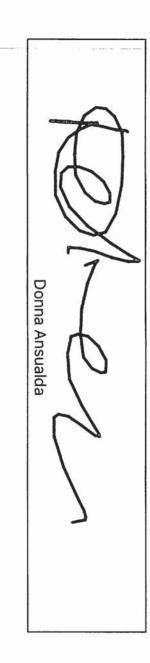
Case 3:20-cr-00371-WHA

BROCKMAN, ROBERT Patient ID: 0300937767 DOB: Age: 78 Gender: M

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60 to 92 in a community-based primary care setting. References: clinical experience with this population. The CogniSense™ tool has been validated in English speaking adults ages neuropsychological and medical evaluation. Disclaimer: This test has high levels of sensitivity, specificity and reliability, but does not replace comprehensive Our recommendations are based on current research and extensive

Clionsky, M and Clionsky E, "Development and Validation of the Memory Orientation Screening Test," <u>American Journal of Alzheimer's Disease & Other Dementias</u>, 2010, 25 (8), 650-656
Clionsky, M and Clionsky E, "Identifying Cognitive Impairment in the Annual Wellness Visit: Who Can You Trust?," <u>The Journal of Family</u> Clionsky, M and Clionsky E, "The Memory Orientation Screening Test (MOST®) accurately separates normal from MCI and demented elders in a prevalence-stratified sample,"<u>Alzheimer's Disease & Parkinsonism,</u> 2013, 3:1 2011, 60: 653-659

EXHIBIT I

James L. Pool, M.D.

Professor, Departments of Medicine and Pharmacology
Baylor Comprehensive Healthcare Clinic
Jamail Specialty Care Center
1977 Butler Blvd - 6th Floor, Suite E6.150
Houston, TX 77030-4101
Tel 713-798-0180 • Fax 713-798-0174
E-mail address: jpool@bcm.edu

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Baylor College of Medicine

January 14, 2020

Kathryn Keneally Jones Day 250 Vesey Street New York, NY 10281



Dear Ms. Keneally:

Department of Justice on the issue of Mr. Brockman's cognitive impairment. understand that this letter will be included by counsel as part of a submission to the U.S I have been asked to provide this letter by counsel for Robert T. Brockman.

James L. Pool Presidential Endowed Chair in Clinical Pharmacology. internal medicine physician at the Baylor College of Medicine (BCM), where I hold the I am a Professor in the Departments of Medicine and Pharmacology and a treating

who has been treating Mr. Brockman in connection with an incidence of urinary bladder Mr. Brockman was referred to me by Dr. Seth P. Lerner (BCM Department of Urology) I conducted a complete physical examination of Mr. Brockman on December 11, 2018 cancer several years earlier.

neuropsychologist and specialist is memory disorders, all with Baylor Medical College. other movement disorders, Melissa Yu, M.D., a BCM neurologist and specialist in Alzheimer's Disease and other memory disorders, and Michele K. York, Ph.D., a BCM Joseph Jankovic, M.D., a BCM neurologist and specialist in Parkinson's Disease and noticeable for approximately three years. For this reason, Mr. Brockman was referred to our discussions that Mr. Brockman has experiencing cognitive problems that have been and their adult son, Robert Brockman. It became evident from my examination and from As part of my examination of Mr. Brockman, I also met with his wife, Dorothy Brockman,

on during her examination of Mr. Brockman on March 20, 2019, and in her subsequent with Parkinson's Disease (or Vascular Parkinsonism). Dr. York conducted a neuropsychological evaluation of Mr. Brockman on March 1, 2019, which Dr. Yu relied examination, and concluded that Mr. Brockman presents symptoms that are consistent Each of these doctors provided me with reports following their examinations. Jankovic examined Mr. Brockman in January 2019. He conducted a physical

Re: Robert Theron Brockman (DOB Letter to Kathryn Keneally • January 14, 2020

Page 2

his ongoing cognitive impairment is consistent with Lewy Body Dementia. diagnoses cannot be totally confirmed except at autopsy of the brain after the death of consistent with Parkinson's Disease (or Vascular Parkinsonism). They also concluded his ongoing cognitive impairment is consistent with Lewy Body Dementia. These diagnosis. Dr. York and Dr. Yu concluded that Mr. Brockman's movements are

appear to be continuing in his routine activities. son that he has had a long-standing, excellent support network that enables him to dementia, he may be able to cover-up his limitations in social and business settings. In Mr. Brockman's case in particular, it became clear from my discussions with his wife and neurological tests show mild to moderate dementia. superior, pre-morbid intelligence and functioned at a high level prior to the onset of cover-up his limitations. recognition of what is going on around him, and may function at a level at which he can or with whom he may be speaking, a person with mild to moderate dementia has some which will manifest as an inability of an individual to know where he is, what he is doing, cause cognitive impairment and dementia. In Mr. Parkinson's Disease (or Vascular Parkinsonism) and Lewy Body Dementia may each In a case such as Mr. Brockman, where an individual had In contrast to severe dementia Brockman's case, his recent

the product of such confabulation, rather than genuine memory. relate them to the question that he is being asked in the present or assimilate the information to report it accurately. If he can compose a response at all, it will likely be inaccessible and defective. Even if he can remember past events, he cannot accurately essence, for a person such as Mr. Brockman, dementia will render long-term memory or accurate memory. asked of him and to respond appropriately. In addition, his ability to report on past events may be distorted by the high risk of confabulation. When a person has dementia, simply, if information is presented to him, he will be unable to comprehend what is being to report on past events. his memory function will attempt to fill in gaps to enable him to respond to questions or At this stage, Mr. Brockman has undeniable short-term memory limitations. the speaker will believe the story to be true, but is not. In

his attorneys in his defense, if criminal charges were to be brought against him. For these reasons, I concur with the medical position that Mr. Brockman cannot assist

Sincerely

James L. Pool,

Professor of Medicine and Pharmacology Baylor College of Medicine, Houston, TX

EXHIBIT M

Baylor College of Medicine

Case 3:20-cr-00371-WHA Joseph Jankovic, MD Document 64-2 Filed 12/08/20

Professor of Neurology, Distinguished Chair in Movement Disorders Director, Parkinson's Disease Center and Movement Disorders Clinic Director, Center of Excellence for Parkinson's Foundation and Tourette Association of America

Parkinson's Disease Center and Movement Disorders Clinic

7200 Cambridge Street, 9th Floor, Suite 9A • Houston, Texas 77030 713-798-2273 phone • 713-798-6808 fax • www.jankovic.org

NEUROLOGY



January 14, 2020

Kathryn Keneally Jones Day 250 Vesey Street New York, NY 10281

Re: Robert Theron Brockman

Dear Ms. Keneally:

You have asked me to provide this letter for inclusion in a presentation that you plan to make to the U.S. Department of Justice on the issue of Robert Theron Brockman's that you will also be providing that report to the Department of Justice. cognitive impairment. You have let me know that you have reviewed the report that I prepared with regard to my examination of Mr. Brockman dated January 30, 2019, and

from doing so. preparing a legal defense. It is my view that his cognitive impairment will prevent him Specifically, I understand that you are asking whether Mr. Brockman can assist you in

Based on my examination, and my understanding of subsequent examinations conducted by Dr. Melissa Yu and Dr. Michele York, I concur that Mr. Brockman has My report discusses my diagnosis of Parkinson's disease or vascular parkinsonism.

can confirm a diagnosis of either Parkinson's disease or Lewy body dementia. body dementia. Notably there is no test that can be administered prior to autopsy that Brockman denied experiencing hallucinations, which are a hallmark indicator of Lewy body dementia. While I understand their reasoning, during my examination Mr. Dr. Yu and Dr. York report that Mr. Brockman's symptoms support a diagnosis of Lewy

occurred. Confabulation differs from prevarication or lying. Confabulation is a symptom sometimes make up stories or provide information about something that has no confabulation, in which the brain will attempt to fill in missing information, causing him to of events. It is a characteristic of this dementia that Mr. Brockman may engage in and making connections between questions that he is being asked and his recollection of cognitive impairment, and is not voluntary. A cognitively impaired person who result of Mr. Brockman's cognitive impairment, he has trouble accessing information recall information that is needed to respond accurately when asked questions. It is characteristic that a person with dementia, such as Mr. Brockman, will be unable to

Brockman's cognitive impairment may appear to be engaged in a normal discussion, engages in confabulation will believe that he is reporting truthfully. A person with Mr. but any information that he may provide may be partial and not complete or accurate

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information about past events. In summary, Mr. Brockman's dementia leaves him unable to provide accurate

Sincerely,

Joseph Jankovic, MD

EXHIBIT

Melissa Yu M.D., FAAN

Alzheimer's Disease & Memory Disorders Center

7200 Cambridge St, 9th Floor, Ste 9B Houston, TX 77030

Phone: (713) 798-2273 Fax: (713) 798-7434

www.bcm.edu



January 21, 2020

Kathryn Keneally Jones Day 250 Vesey Street New York, NY 10281 Re: Robert T. Brockman

Dear Ms. Keneally:

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examination of Robert Brockman. I understand that you will provide a copy of my report dated February 20, 2019, and this letter to the U.S. Department of Justice. At your request, I am providing this letter to respond to questions that you raised concerning my

active for a long time may be able to speak on business issues in a way that appears functional, levels of cognitive impairment. Similarly, individuals who have been in business or professionally experience anosognosia, which means that they lose insight into the cognitive limitations of their disease. Individuals with dementia may perceive themselves as functioning normally, even well. experiences fluctuations in decision-making ability. Patients with most forms of dementia dementia will often experience day-to-day and even hour-to-hour fluctuations in their ability to but will face difficulties when pressed for decisions or specifics. Patients with Lewy body to function well on a surface level, and will retain "social niceties" despite sometimes-significant Individuals with dementia, who have good social instincts and expansive vocabulary may appear You asked specifically about the comments made by Mr. Brockman's son that Mr. Brockman

distraction while completing the action. dementia will have difficulty paying attention to the request, remembering each step, and resisting and cognitive function. As an example, if a requested action requires three steps, a person with spatial function, language, memory, and executive function - in essence, all aspects of thought Dementia of any kind is more than simple memory loss. The impact of dementia includes visual

Sincerely

Melissa Yu, M.D., FAAN

EXHIBIT C



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Michele K. York, PhD, ABPP-CN

Board Certified Clinical Neuropsychologist Department of Neurology

CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Date of Birth (Age): Date(s) of Evaluation: Patient Name: Robert Brockman 12/03/2019 (78 yr.)

Evaluation Location: Referred by:

BCM Medical Center, McNair Campus, 9th Floor

James Pool, MD

Referral Question: Independent Neuropsychological Examination

BACKGROUND AND REFERRAL INFORMATION

neuropsychological evaluation conducted on 03/01/2019 and limited review of medical records information was obtained during an interview with Mr. Brockman and his wife, his previous clinical functioning was conducted by request by Kathy Keneally, Partner, Jones Day (New York). The following term memory loss. The neuropsychological evaluation of his current cognitive, behavioral, and emotional Mr. Brockman is a 78 year-old, right-hand dominant, Caucasian male with a two to three-year history of short-

Neuropsychology (Bush, 2005). is mandate by the laws of the State of Texas (Texas Administrative code) as well as the Code of Ethics of the create a potential conflict between the psychologist's role as an objective evaluator versus an advocate for the Ms. Keneally in defense for Mr. Brockman's legal tax case; therefore, establishing a treatment relationship would relationship between the psychologist and the person being evaluated. The purpose of the evaluation is to assist American Psychological Association (2010), and it represents the official position of the National Academy of patient. Consequently, it is important that a retained expert avoid the role of treatment provider. This standard Declarations: A forensic evaluation differs from a clinical evaluation in that there is no traditional doctor-patient

was informed of these conditions and consented to the evaluation and to his ability to understand these necessarily restricted to that of a forensic consultant rather than a treating doctor in this context. Mr. Brockman she is excluded from providing any direct treatment to Mr. Brockman. Consequently, Dr. York's role was Dr. York was retained for a neuropsychological evaluation by Kathy Keneally of Jones Day. As explained above, limitations.

information. The data from this evaluation is contained in Dr. York's confidential files. upon reasonable neuropsychological probability and are subject to modification based on provision of additional a review of his provided medical records to clarify the timeline of her medical procedures and hospitalizations. These opinions are based on current neuropsychological assessment techniques and research. Opinions are based Opinions reached in this report are based on direct interview and results of my neuropsychological evaluation and

visuoconstruction. Praxis was impaired for intransitive praxis tasks. These impaired performances were found semantic fluency, executive functions (set shifting, inhibition, working memory, and problem solving), attention/concentration, learning and recall of prose material and a word list, learning and recall of visual material, MoCA was 19/30 (total), 6/6 (orientation), and 2/5 (short-term recall), which was significantly below expectation. with Dr. York on 03/01/2019. His general intellectual functioning (WAIS-IV FSIQ=87) fell within the low average range, which was a decline from his estimated premorbid intellectual functioning in the above average range. His Previous Neuropsychological Assessment: Mr. Brockman underwent a clinical neuropsychological evaluation Brockman demonstrated borderline impaired to deficient performances on measures of sustained

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diagnosis of dementia, and REM Behavior Disorder, his pattern of cognitive impairments was reported as of his depression and agitation which produced moderate familial distress. He demonstrated movements that behaviors, changes in appetite, and depression for an overall minimal level of familial distress, with the exception The NPI-Q (severity=8; distress=11) indicated problems with agitation, anxiety, apathy, irritability, nighttime depression was within normal limits (GDS=8). Self-care ADLs (PSMS) were 7/30 and instrumental ADLs were 9/31. and nonverbal episodic memory, and executive functioning, with mild functional declines. Self-report of dementia of mild to moderate severity characterized by deficits in the areas of visuospatial functioning, verbal abstract reasoning, verbal fluency and naming, This pattern of neuropsychological performance indicated a within the low average to average ranges on measures of basic attention, fund of information, verbal and visual consistent with Dementia with Lewy Bodies (DLB). were consistent with a parkinsonism disorder. These abnormal movements taken together with his current

Houstonian but is not making any progress. He denied any falls. Brockman reported that his balance has declined over the past year. He has been using a balance board at the Current Concerns and General Condition: Mr. Brockman and his spouse participated in the clinical interview. Mr.

think about who will run the company. He reported that he thinks he can continue to be the chairman. that the company will be "ruined" and this will affect the people who work there. He noted that he is starting to He said the government is information gathering and talking to people he used to work with. He is concerned He noted that the government is "mad at him" but "they don't say why," and they want to "confiscate the trust." On direct inquiry, he reported that his tax issues are about a small company that he sold to a family trust in 1981.

noted that he does not recall the code to unlock his telephone. He has difficulties completing tasks. His wife drives memory has also declined as he has forgotten how to tie a tie or to use a remote control for their television. She himself more often. He is unable to recall details from his daily activities even later in the day. His procedural does not accomplish his tasks described. His short-term memory has continued to decline, and he is repeating initiation problems. He reported that he does not go into the office as much as he did in March 2019. He noted at work and she had to help him type all of his employee performance reviews. She reported that he has increased described that he has "blank times" that he appears more confused. His wife noted that he was having difficulties Mrs. Brockman described that her husband's cognition fluctuates on a daily basis from minute to minute. She him to the office. She noted that he has declines in his spelling ability particularly while typing. He is unable to that it takes him longer to process information at work. His wife described that he sits at work for many, but he multi-task.

visual hallucination of a bug on the testing room floor that was not present to either the examiner or his wife continued to deny visual hallucinations. It is noted that he had a previous visual illusion described below and a began to act out his dreams at least three years ago. He reported that he has floaters in his visual fields. He his sleep. He has decreased appetite and has lost 20lbs over the past several months. His wife reported that he harder to wake up. He is more violently acting out his dreams and has been kicking. He takes trazadone to aid behavioral changes, suicidal ideation, and auditory hallucinations. Sleep was described as adequate but he is He noted that he has realized that "all of sudden I am old." He denied heightened general anxiety, personality or but he continues to feel "slightly depressed." He noted that his diagnosis brings him "more down than before." Emotional Functioning: Mr. Brockman reported that he began taking Wellbutrin which has improved his mood, during his evaluation in March 2019.

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speech. His speech is slowed and he has slowed response latencies. His decision making is also slowed, and he He has increased difficulties with following directions. His wife noted spelling changes and mild stuttering in his complete tasks. His wife noted that he is clumsy getting out of the car and has hit curbs while driving and parking. more tangential. He forgets names of new individual and of familiar locations. He also finds it more difficult to years. He and his wife reported that he is repeating himself, losing possessions, losing his train of thought and is Previous Cognitive Complaints: Mr. Brockman reported declines in his short-term memory over the past 2 to has difficulties multi-tasking.

three years ago secondary to his atrial fibrillation. He denied a history of seizures, TIA/stroke, or migraines. use of tobacco or illicit drugs or a remote history of substance misuse/abuse. He quit drinking alcohol two to movement disorders or dementia. Psychiatric history is notable for depression. Mr. Brockman denied current and may have suffered a concussion. He did not lose consciousness. Familial medical history is unremarkable for melanoma. He reported that when he was in the sixth grade he was hit on the top of the head with a hammer had increasing clumsiness. Surgical history is notable for tonsillectomy, cataract surgery, and excision of a a mild motor improvement when he first started on the medication, but when the medication was increased, he was told that he might have had a visual headache. He began taking levodopa in February 2019. His wife noted on a spectrum that was moving. He noted he had this visual illusion for 20 minutes and then it went away. He infection and pericarditis four years ago. He reported an episode of vision changes in which he saw a bar of color He has plantar fasciitis, which reduces his exercise ability. He reported that he was hospitalized for a prostate recurrence, hypercholesteremia, glaucoma (mild), erectile dysfunction, tremor, micrographia, and back problems. Medical History: Medical history is remarkable for hypothyroidism, atrial fibrillation, bladder cancer with

Medications: Wellbutrin 100mg tid, trazodone 50mg at night, Synthyroid .75mg, Eliquis 2.5mg bid, aspirin, regimen of vitamins and supplements. carbidopa/levodopa25/100mg 2 tablets tid, stool softener, Exelon 2 patches. He noted that he also takes a

Marketing at The University of Florida. He reported that he was a good student. He is Chairman and CEO of spouse in their private residence. He earned a BA in Business and attended graduate school for one year in Reynolds and Reynolds Company. Social History: Mr. Brockman has been married for 50 years, and they have one son. He currently lives with his

REVIEW OF LIMITED MEDICAL RECORDS

worse physically and mentally despite taking levodopa, with a "zombie-like effect" as described by his wife. criteria for DLB; however, he acknowledged that he meets criteria for dementia. Mr. Brockman noted that he was Jankovic noted that because Mr. Brockman denied hallucinations and cognitive fluctuations that he does not meet movement disorder. He was diagnosed with postural instability gait disorder subtype (PIGD) of parkinsonism. Dr. <u>Dr. Joseph Jankovic Evaluation</u>: Mr. Brockman was evaluated by Dr. Joseph Jankovic on March 13, 2019 for his

fluctuations in his father's decision making abilities with good and bad days. It was noted that his son has him were reported by his wife and son. His son noted that his father's cognitive ability fluctuates, with episodes of patch on 3/13/2019. Anosmia was reported for 10 years. Memory, word finding, and slowed processing speed was performed showing significant loss of dopaminergic signal, and he was started on Sinemet and the Exelon Memory loss was dated to November 2017 in a medical chart note. Dr. Yu medical note stated that a DATSCAN "blankness" associated with less interaction alternating with improved cognition. His son also noted cognitive Dr. Melissa Yu Evaluation: Mr. Brockman was evaluated by Dr. Melissa Yu on March 20, 2019 for his memory loss.

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practice clock drawing to test his functioning. Dr. Yu's differential diagnoses included Dementia with Lewy Bodies suggestive of DLB. or Parkinson's Disease Dementia. It was noted that the time course and fluctuations in cognition were more

showed mildly decreased ability to follow directions, and he occasionally needed repetition of directions and lost stand-alone measures of performance validity; therefore, the following results are thought to be an accurate appropriate and friendly. He tended to minimize his cognitive impairments. He passed several embedded and place during set task. He exhibited cooperative test-taking behavior. His attitude towards the examiner was He appeared to be confused at times even in the middle of tasks that he originally was completing accurately. He speech. There was no evidence of paraphasias. His cognition tended to fluctuate throughout the testing session. adequate for the testing session. Conversational speech was coherent but was tangential in conversational pleasant, but his affect was flat. Eye movements were normal. Vision (with corrective lenses) and hearing were drawings but did not interfere with his performances. He evidenced slowed response latencies. His mood was time and was accompanied by his spouse who participated in the clinical interview. General appearance was neat estimation of his current cognitive abilities. and clean. BEHAVIORAL OBSERVATIONS: Mr. Brockman was tested during a single session as an outpatient. He arrived on The patient exhibited slowed motor behavior and gait and a mild tremor which was notable on

MEASURES ADMINISTERED

Reproduction Recognition); Wide Range Achievement Test (WRAT-4 subtest: Math Computation); Wisconsin Card I-Older Adult, Logical Memory Recognition-Older Adult, Visual Reproduction I, Visual Reproduction II, and Visual Intelligence Scale-IV (WAIS-IV subtests: Arithmetic, Coding, Digit Span, Information, Similarities, and Visual and Word); Trail Making Test (TMT subtest: Trails A); Verbal Series Attention Test (VSAT); Wechsler Adult Naming, Numbers and Letters, and Visual Discrimination); Praxis Examination; Rey Complex Figure Test-Meyers subtests: Daily Living Memory-Delayed, Daily Living Memory-Immediate, Daily Living Memory-Recognition, Depression Scale; Hopkins Verbal Learning Test-Revised (HVLT-R); Neuropsychological Assessment Battery (NAB Controlled Oral Word Association Test (COWAT version: FAS); General Anxiety Disorder 7-item Scale; Geriatric Maintenance Scale (PSMS). Clinical Interview with patient and his spouse. Sorting Test (WCST); Instrumental Activities of Daily Living Scale (IADLS); Lawton and Brody Physical Self-Puzzles); Wechsler Memory Scale-4th Edition (WMS-IV subtests: Logical Memory II-Older Adult, Logical Memory Version; Semantic Verbal Fluency Test; Stroop Color-Word Interference Test (Stroop subtests: Color, Color-Word, Montréal Cognitive Assessment (MoCA); Caregiver Neuropsychiatric Inventory (NPI-Q); Clock Drawing Test;

comprehend task instructions and maintain task set independently. Informant questionnaires were completed Mr. Brockman did not complete the Trail Making Test (TMT subtest: Trails B) measure as he was unable to by the patient's spouse.

NEUROPSYCHOLOGICAL FINDINGS

diagnostic purposes, a cognitive deficit is considered a performance score that is >1.5 standard deviations away from the mean in the direction of poor The following clinical descriptors identify performance with the range of Standard Scores (average=100, standard deviation=15) indicated in parentheses: Very Superior (>130), Superior (120-129), High Average (110-119), Average, (90-109), Low Average (80-89), Borderline (70-79), and Deficient (<69). For compared to the reference group for that measure (i.e., Z-score) based on peers of similar age, gender, and education background as This criterion is equivalent to a Standard Score <78, T-score <35, or a Scaled Score of <5).

Mental Status: Evaluation of Mr. Brockman's general mental status on the MoCA revealed a score of 19/30, which is moderately below expectation. He was fully oriented (6/6). He demonstrated difficulties with set shifting,

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Department of Neurology

fluency. He did not recall any words (0/5) and was not aided by category cueing. He was aided by multiple choice visuospatial construction, sustained attention, repeating one sentence, serial subtractions, and with verbal cueing for 4/5 words.

IV) and obtained scores ranging from low average to high average yielding a pro-rated Full Scale IQ estimate of Intellectual: Mr. Brockman was administered subtests from a measure of general intellectual functioning (WAIS-96, which is in the average range.

simple addition, multiplication and division arithmetic problems (e.g., 3X4=7, 14/3). 0 errors. Written math computation revealed a 5.6 grade equivalent. It is noted that he was unable to perform Performance on a simple visual-motor sequencing task requiring scanning and mental tracking was deficient with color naming were deficient. Mental processing speed for manual code transcription was low average. speed and for accuracy. Immediate auditory attention span for digits was average with 6 digits forward, 4 digits backward, and 5 digits when re-ordering them in ascending sequence. Speed of single word reading and speed of Attention/Concentration: Attention and mental tracking for overlearned verbal sequences was deficient for

one time and had to be reminded of the instructions after each card so that he would not match to the wrong set He made numerous "Other" responses that did not match to any of the 3 possible correct categories. He lost set testing fell in the low average range (11-16th percentile) with 1 correct category achieved by the end of the task. and he was unable to set shift independently. Performance on a novel task of problem-solving and hypothesis and set-shifting was impaired and the task was discontinued as he was unable to comprehend the task instructions arithmetic was average. Performance on a complex visual-motor sequencing task requiring scanning, tracking, was borderline impaired. His abstract verbal reasoning was average. Working memory to perform mental Executive: Mr. Brockman's ability to inhibit a dominant verbal response in the face of incongruent visual stimuli of cards. His performance fluctuated during this task.

deficient range with 25.0% retention which falls within the deficient range. On recognition memory assessment, categorized word list across 3 trials was deficient (1, 4, and 4 words per trial), and delayed recall was in the learned material was 50.0%. Recognition memory was average (16/23). Incremental learning for a semanticallycontextual material was average (SS=8). Delayed recall of the stories was low average (SS=7). Retention of initially in the borderline impaired range. 10/12 target words were correctly identified, 3 false positive errors were committed, with discrimination accuracy Memory: Recall of culturally-based general knowledge was high average. Immediate recall of verbally presented

Immediate recall of basic geometric figures was borderline impaired (SS=4). Delayed recall of the designs was deficient (SS=2). Retention of the initially learned material was 0.0%. Recognition memory was average (2/7).

low average with 14 exemplars generated. Confrontation naming of pictured objects was average (NAB Form 1; Language: Lexical fluency was borderline impaired with between 5 to 8 words per trial. Semantic fluency was 29/31). He made an error of transitive limb praxis which was improved with imitation

average. Visuoconceptual ability to draw a clock was within normal limits to command (CDT=10/10) and impaired or omitted several of the internal details. His spatial reasoning ability to mentally arrange puzzle pieces was low a mild tremor but it did not interfere with his drawing ability. He maintained the overall gestalt but he distorted Visual-Perceptual: His drawing of a complex geometric design scored in the low average range. He demonstrated

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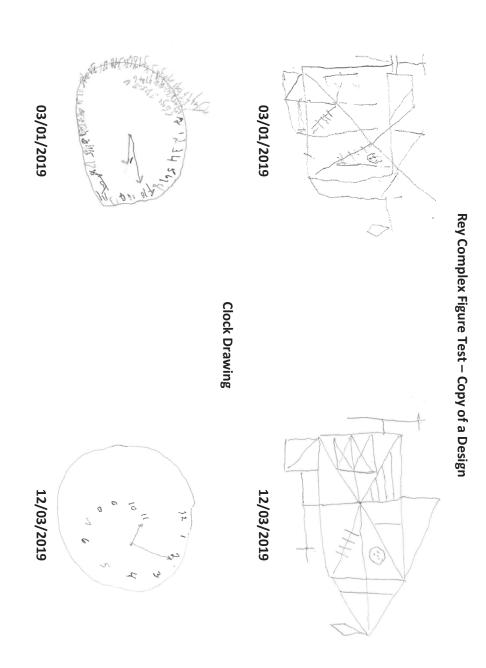
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the numbers ended in the middle of the clock face. He placed the hands accurately to where he drew the numbers when copying a model (CDT=8/10). He drew the clock face and began placing the numbers accurately but then

Examples of visuospatial performances highlighting Mr. Brockman's fluctuating cognitive functioning.



declines in memory, downhearted and blue, lack of excitement for life, difficulty beginning new projects, poor activities and/or lack of interest, lack of hope regarding the future, ruminating thoughts, feeling as though endorsed the following, suggestive of probable depression (GDS=19): presently unsatisfied with life, terminating thinking skills. energy, hopelessness, difficulties with concentration, difficulties with decision making, and general declines in something negative is going to occur, unhappiness, helplessness, preferring to stay home, worry about the future, On a face valid measure used to assess cognitive, emotional and physical symptoms of depression, Mr. Brockman Mood / Personality: On a self-report measure of anxiety, his responses fell in the minimal range (GAD-7=4/21).

eats, dresses, grooms, and bathes very slowly. He requires assistance with ambulation. He requires assistance self-care ADLs (PSMS=7/30). It was noted that he is constipated and goes to the restroom every half hour; he ability to complete basic and instrumental activities of daily living. Mr. Brockman reportedly has difficulties with with instrumental activities of daily living (IADLs=14/31) including telephone use, shopping, food preparation, Activities of Daily Living: His spouse served as the informant completing a questionnaire regarding the patient's

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Department of Neurology

she notices that he has forgotten to take doses. money even with day-to-day expenses. She has to remind him to take his medications, and if she does not then transportation, and finances. His wife noted that he seldom uses his phone. He fluctuates in his ability to handle

changes in appetite (NPI-Q severity=12; distress=25) which produce an overall moderate to extreme level of disturbance and moderate problems with agitation, depression, apathy, irritability, nighttime behaviors, and symptoms commonly associated with dementia, reportedly observing mild problems with disinhibition and motor familial distress. Neurobehavioral: The patient's spouse completed an inventory assessing for the presence of neurobehavioral

SUMMARY AND IMPRESSION

are, as far as I know, true, and the opinions in the report are genuinely held by me and the report contains neuropsychological evaluation as a component of a forensic evaluation. The factual matters stated in this report reference to all matters I consider significant. Brockman is a 78 year-old, right-hand dominant, Caucasian male who underwent an independent

current neuropsychological and emotional status. abilities. The testing environment was optimal and the following results are considered a valid estimate of his impairment. It is noted that neuropsychological tests were chosen to best assess Mr. Brockman's cognitive It is this examiner's opinion based on the testing conducted and behavioral observations that Mr. Brockman was putting forth full effort and was not exaggerating or embellishing the nature and extent of his cognitive

which is a significant decline from his estimated premorbid intellectual functioning in the high average range Mr. Brockman currently operates in the average range of general intellectual functioning (WAIS-IV FSIQ=96), his wife indicated a significant decline in his functional ability. (TOPF=114, from March 2019 evaluation). His MoCA was 19/30 (total), 6/6 (orientation), and 0/5 (short-term recall), which is moderately impaired. Self-care ADLs (PSMS) were 7/30 and instrumental ADLs were 14/30, and

disturbance, agitation, depression, apathy, irritability, nighttime behaviors, and changes in appetite for an overall Self-report of depression was elevated (GDS=19), but he did not endorse elevated levels of anxiety (GAD-7=4). The NPI-Q completed by his wife (severity=12; distress=25) indicated problems with disinhibition, motor moderate to extreme level of familial distress.

only retained 50% of the material he originally learned after a brief delay (low average). His written arithmetic to high average). It is noted that his verbal memory was aided by context with average learning of a story, but he functioning. His intellectual functioning subtest scores remained within the broadly average range (low average verbal fluency), learning and recall of a word list, learning and recall of visual material, and basic visuospatial processing speed, executive functions (including working memory, problem solving, inhibition, set shifting, and Mr. Brockman demonstrated borderline impaired to deficient performances on measures of oral and written performance was a 5.6 grade equivalent with difficulties noted in performing basic addition, multiplication and division problems. His basic attention and language (naming and semantic fluency) performances were average.

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CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION Brockman, Robert

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Department of Neurology

Comparison with prior results obtained on 03/01/2019 revealed the following pattern of interim changes:

Declines were found in the areas of:

- Verbal fluency (low average to borderline impaired)
- Graphomotor sequencing (borderline impaired to deficient)
- Learning of a word list (borderline impaired to deficient)
- Decreased functional abilities

Improvements were found in the areas of:

- Sequencing of digits (deficient to average)
- Learning and recall of contextual information (deficient to average and low average with only 50%
- Clock drawing (impairments remain)
- Visuospatial construction of a complex figure

testing in March 2019, which further supports this diagnosis. His dementia falls under the diagnostic category of of patients with DLB do not demonstrate visual hallucinations particularly at the early stages of the disorder. Mr. a diagnosis of Dementia with Lewy Bodies (DLB). Visual hallucinations are a hallmark of DLB; however, up to 30% time of diagnosis of his movement disorder, cognitive fluctuations, and REM Behavior Disorder are consistent with declines. Mr. Brockman's current cognitive pattern and his parkinsonism, taken together with his dementia at the memory, processing speed, executive functioning, and visuospatial functioning with significant functional dementia of mild to moderate severity characterized by deficits in the areas of verbal and nonverbal episodic a blank stare expression. These fluctuations were more apparent during this evaluation as compared to his improvements on a few measures; however, during several tasks, he became more confused and demonstrated It is noted that Mr. Brockman's cognition fluctuated significantly throughout the evaluation. He demonstrated Lewy Body Dementias. Brockman reported a previous visual illusion and a mild visual hallucination was present during neuropsychological previous evaluation in March 2019. Mr. Brockman's pattern of neuropsychological performance indicates a

surrounding the case and manipulate this information in a logical manner that will allow him to make comparisons defense. He is unable to recall and demonstrate a thorough understanding of the relevant elements of the issues impairments and fluctuations, it is my opinion that Mr. Brockman is unable to participate and aid in his own Based on the current cognitive findings, his diagnosis of dementia, and the breadth and severity of his cognitive and weigh his options.

Michele K. York, PhD, ABPP-CN Board Certified Clinical Neuropsychologist TX License #31159

Michal & God, PhD

EXHIBIT P

Patient Information

Diagnostic Report 20-cr-00371-WHA

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Name: ROBERT THERON BROCKMAN Medical Record Number: 0300937767

Sex Code: M

BirthDate:

Exam Information

Accession Number: 201902140001

Modality: NM

Body Part: HEAD

Description: NM DATSCAN BRAIN SPECT

Patient History: G20 Performed Date: 2/14/2019 11:22:21

Final Report

Dopamine Transporter Imaging (DaTscan)

Brain Imaging, tomographic (SPECT)

Reason for exam: G20: Parkinson's disease

approximately 4 hours post administration of the radiopharmaceutical. radiopharmaceutical. I-123 ioflupane 4.5 mCi was administered for thyroid blockade 30 minutes prior to injection of the intravenously. Tomographic images of the head were obtained at Report: The patient received Lugol?s solution 10 drops in 30 mL of water

background tracer activity. Decrease of tracer is slightly greater in the right caudate nucleus compared to the left. accumulation is markedly decreased in the caudate nuclei relative to Tracer activity is visually absent in the bilateral putamina. Tracer

Impression:

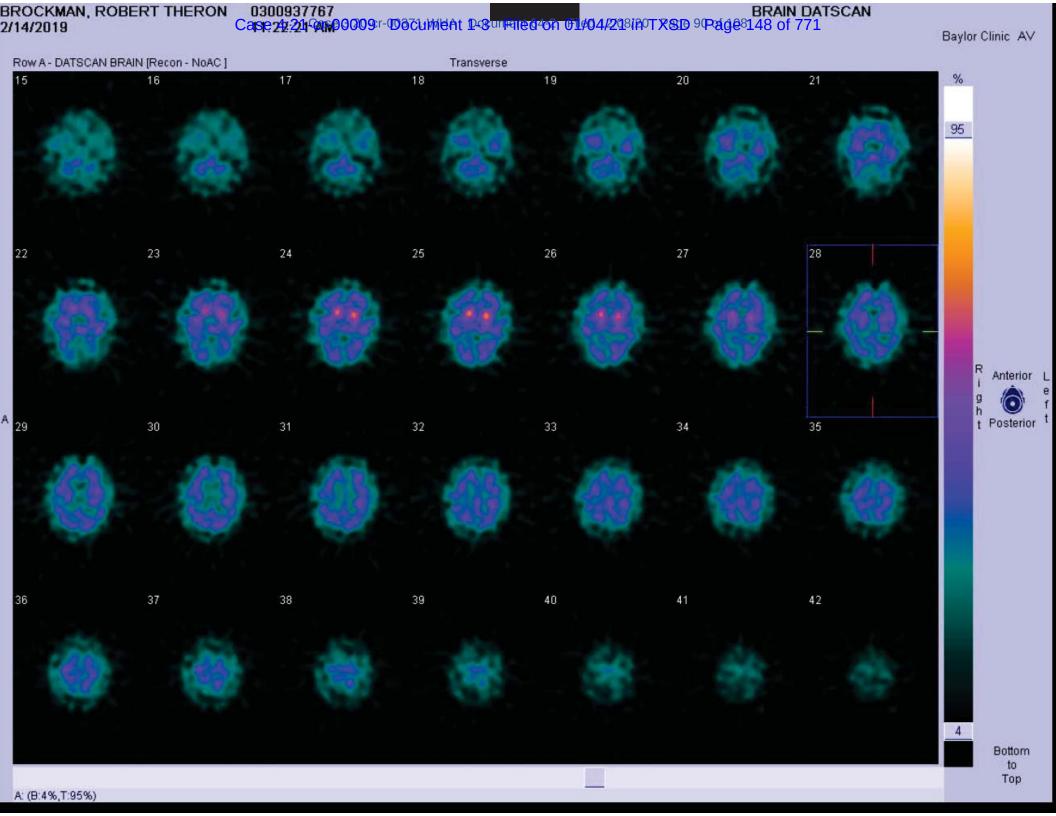
striata with loss greater on the right compared to the left. Severe loss of dopaminergic neuronal function in the bilateral dorsal

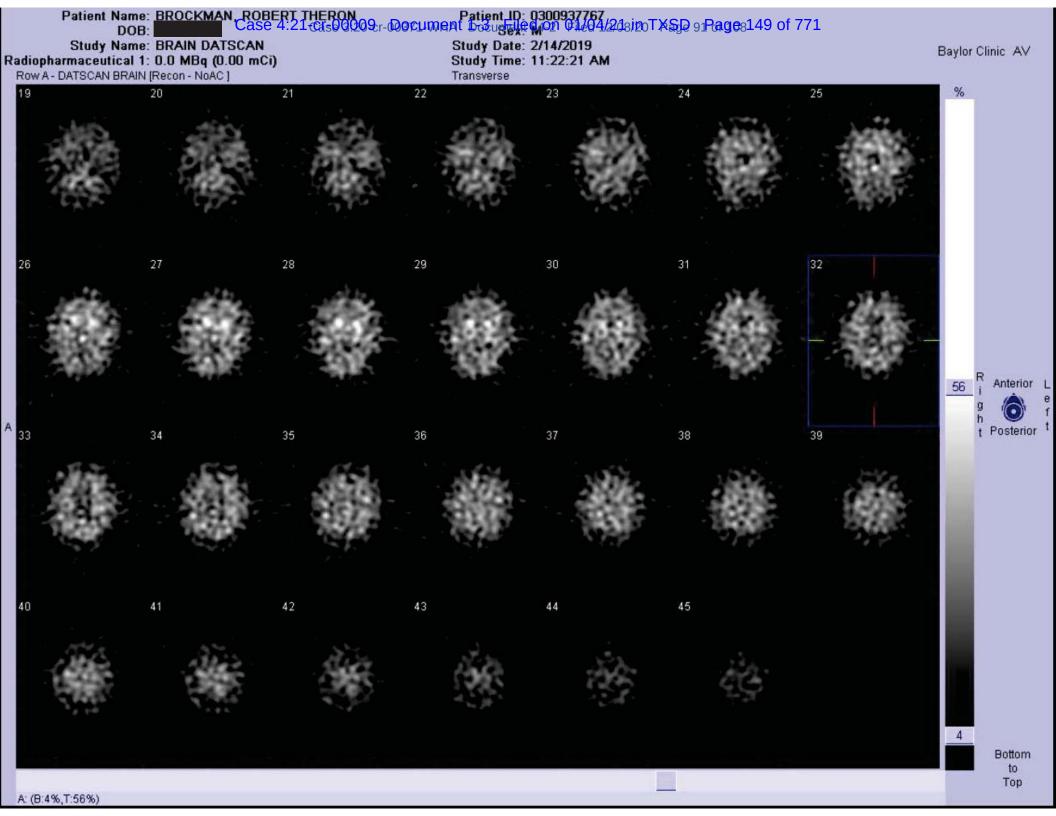
interpretation. The DaTQUANT report is included with the images on PACS Semi-quantitative analysis using the DaTQUANT program supports the above

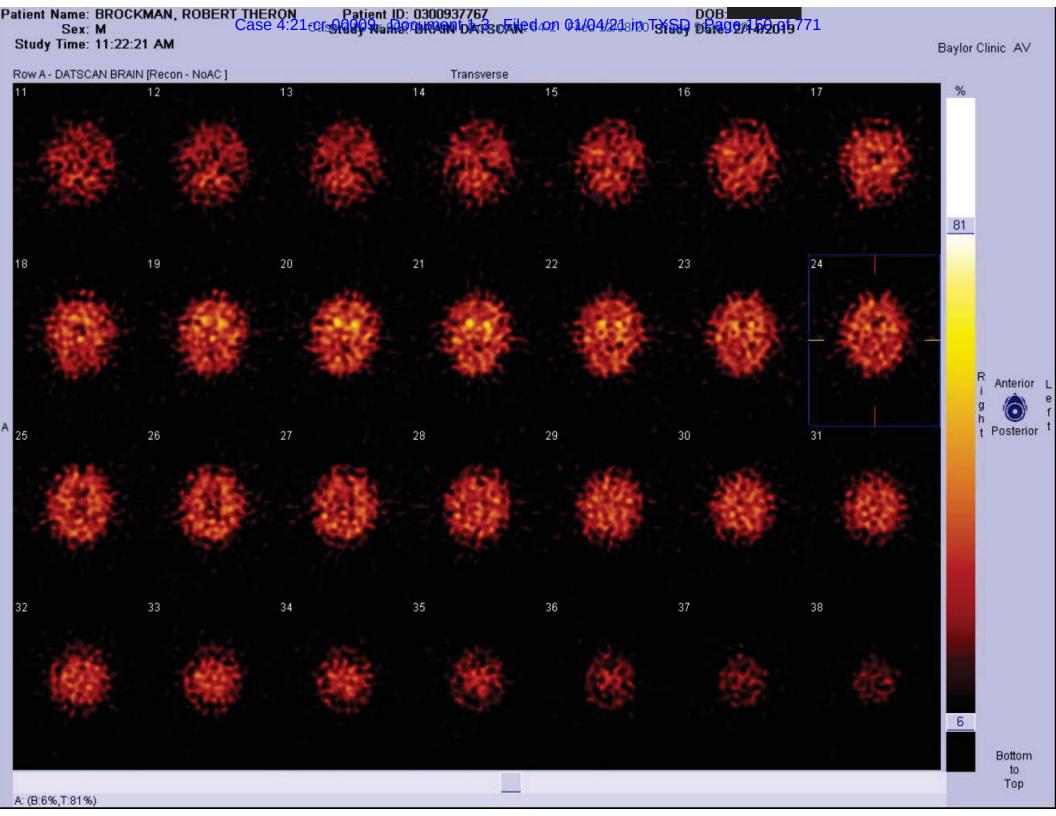
Signed by: Dr. Julie Wendt, M.D. on 2/15/2019 7:22 AM

Principal Interpreter

Provider ID: JWENDT Name: Provider JWENDT







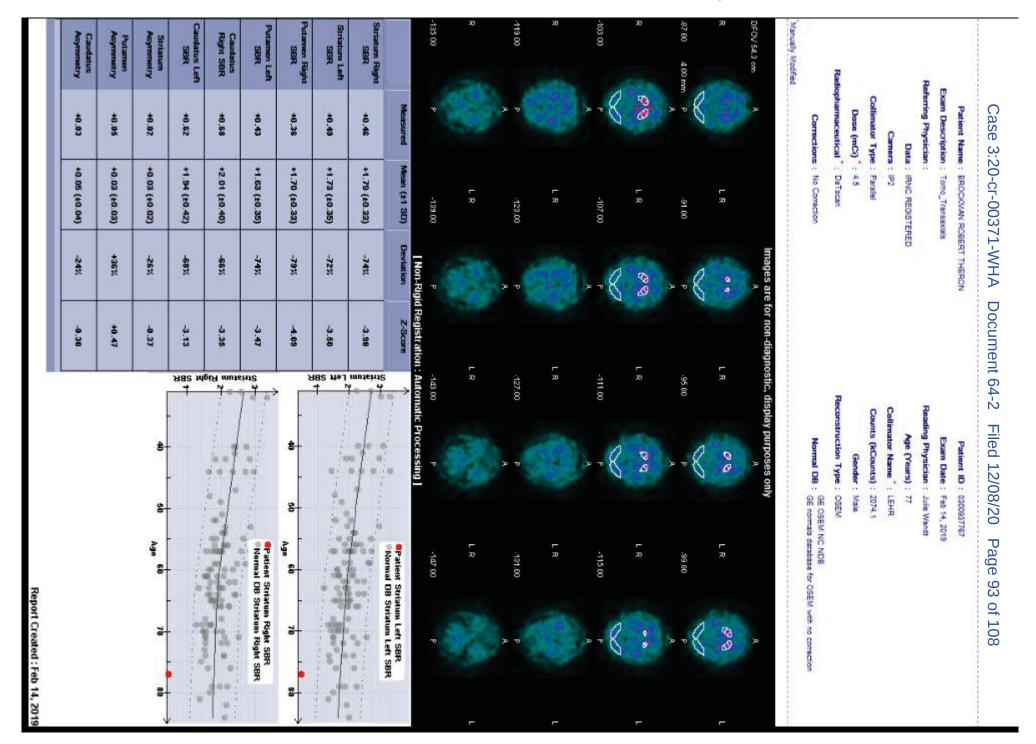


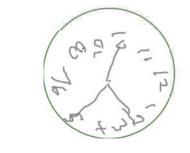
EXHIBIT Q

Age: 79 Gender: M

Date: October 05, 2020

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of 77 Page 15TOTAL SCORE SCORE SEQUENCE MEMORY ORIENTATION 3-WORD MEMORY TODAY 3 ω 4 4 **CLOCK DRAWING: TODAY**



Background

cognitive function. His wife (Dorothy) and son (Robert) report deteriorations in cognitive functions. his annual physical examination to monitor objective changes with these computerized metrics in his This 79 year-old man with Parkinson's Disease and dementia has been tested today in clinic during

-'dementia _{ரி}n this score range had normal cognition, 2% had Mild Cognitive Impairment (MCI), and 98% had 面formerly Moderate Dementia). In the CogniSense research database of 3,500 patients, no patients and educational level and is typically associated with Major Neurocognitive Disorder, moderate Strotal score is 13 of 29 points. This score falls below the cutoff for dementia in patients of this age

Case 4:21-cr-00009 the test administrator agrees with the results of this test. Corrections Correcti October 2019 October 2020 13

Plan

Repeat comprehensive annual neuropsychological testing by Dr. Michele York is scheduled.

Brockman, Roberse 3:20 Patient ID: 03527911 DOB:



of of general state has high levels of sensitivity, specificity and reliability, but does not replace comprehensive publisclaimer: This test has high levels of sensitivity, specificity and reliability, but does not replace comprehensive neuropsychological and medical evaluation. Our recommendations are based on current research and extensive neuropsychological and medical evaluation. The CogniSenseTM tool has been validated in English speaking adults agonomic provides the provided of the second provides of the second provides agonomic provides Collinical experience with this population. The CogniSense™ tool has been validated in English speaking adults ages

Case

Clionsky, M. and Clionsky, E. "Development and Validation of the Memory Orientation Screening Test," <u>American Journal of Alzheimer's Clionsky</u>, M. and Clionsky, E. "The Memory Orientation Screening Test (MOST®) accurately separates normal from MCI and demented on prevalence-stratified sample, "Alzheimer's Disease & Parkinsonism, 2013, 3:1

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4:21-cr-o-00009

EXHIBIT R



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Department of Neurology

CONFIDENTIAL NEUROPSYCHOLOGICAL EVALUATION

Date of Birth (Age): Patient Name: Robert Brockman (79 yr.)

Evaluation Location: Date(s) of Evaluation: 10/07/2020

Referral Question: Referred by:

James Pool, MD/Kathy Keneally, Jones Day BCM Medical Center, McNair Campus, 9th Floor

Independent Neuropsychological Examination

BACKGROUND AND REFERRAL INFORMATION

clinical neuropsychological evaluation conducted on 03/01/2019 and his previous forensic evaluation conducted following information was obtained during an interview with Mr. Brockman and his son, Robert, his previous functioning was conducted by request by Kathy Keneally, Partner, Jones Day (New York) and Dr. James Pool. The and behavioral decline. The neuropsychological evaluation of his current cognitive, behavioral, and emotional Mr. Brockman is a 79 year-old, right-hand dominant, Caucasian male with a three to four-year history of cognitive on 2019 and limited review of medical records.

Neuropsychology (Bush, 2005). create a potential conflict between the psychologist's role as an objective evaluator versus an advocate for the Ms. Keneally in defense for Mr. Brockman's legal tax case; therefore, establishing a treatment relationship would relationship between the psychologist and the person being evaluated. The purpose of the evaluation is to assist American Psychological Association (2010), and it represents the official position of the National Academy of patient. Consequently, it is important that a retained expert avoid the role of treatment provider. This standard Declarations: A forensic evaluation differs from a clinical evaluation in that there is no traditional doctor-patient is mandate by the laws of the State of Texas (Texas Administrative code) as well as the Code of Ethics of the

was informed of these conditions and consented to the evaluation and to his ability to understand these necessarily restricted to that of a forensic consultant rather than a treating doctor in this context. Mr. Brockman she is excluded from providing any direct treatment to Mr. Brockman. Dr. York was retained for a neuropsychological evaluation by Kathy Keneally of Jones Day. As explained above, limitations. Consequently, Dr. York's role was

neuropsychological probability and are subject to modification based on provision of additional information. The neuropsychological assessment techniques and research. clarify the timeline of his medical procedures and hospitalizations. These opinions are including an interview with Mr. Brockman and his son, Robert, and a review of his provided medical records to Opinions reached in this report are based on direct interview and results of my neuropsychological evaluation data from this evaluation is contained in Dr. York's confidential files. Opinions are based upon reasonable based on current

range. His MoCA was 19/30 (total), 6/6 (orientation), and 2/5 (short-term recall), which was significantly below average range, which was a decline from his estimated premorbid intellectual functioning in the above average with Dr. York on 03/01/2019. In 2019, his general intellectual functioning (WAIS-IV FSIQ=87) fell within the low Previous Neuropsychological Assessments: Mr. Brockman underwent a clinical neuropsychological evaluation expectation. Mr. Brockman demonstrated borderline impaired to deficient performances on measures of

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consistent with Dementia with Lewy Bodies (DLB). diagnosis of dementia, and REM Behavior Disorder, his pattern of cognitive impairments was reported as were consistent with a parkinsonism disorder. These abnormal movements taken together with his current of his depression and agitation which produced moderate familial distress. He demonstrated movements that behaviors, changes in appetite, and depression for an overall minimal level of familial distress, with the exception The NPI-Q (severity=8; distress=11) indicated problems with agitation, anxiety, apathy, irritability, nighttime depression was within normal limits (GDS=8). Self-care ADLs (PSMS) were 7/30 and instrumental ADLs were 9/31. verbal and nonverbal episodic memory, and executive functioning, with mild functional declines. Self-report of indicated a dementia of mild to moderate severity characterized by deficits in the areas of visuospatial functioning, and visual abstract reasoning, verbal fluency and naming, This pattern of neuropsychological performance were found within the low average to average ranges on measures of basic attention, fund of information, verbal solving), and visuoconstruction. Praxis was impaired for intransitive praxis tasks. These impaired performances visual material, semantic fluency, executive functions (set shifting, inhibition, working memory, and problem sustained attention/concentration, learning and recall of prose material and a word list, learning and recall of

were 7/30 and instrumental ADLs were 14/30, and his wife indicated a significant decline in his functional ability. grade equivalent with difficulties noted in performing basic addition, multiplication and division problems. His and recall of visual material, and basic visuospatial functioning. His written arithmetic performance was a 5.6 memory, problem solving, inhibition, set shifting, and verbal fluency), learning and recall of a word list, learning deficient performances on measures of oral and written processing speed, executive functions (including working was 19/30, which is a moderately impaired performance. Mr. Brockman demonstrated borderline impaired to premorbid intellectual functioning in the high average range (TOPF=114, from March 2019 evaluation). His MoCA average general intellectual functioning (WAIS-IV FSIQ=96), which is a significant decline from his estimated Mr. Brockman underwent a second neuropsychological evaluation on 12/03/2019. This evaluation revealed basic attention and language (naming and semantic fluency) performances were average. Self-care ADLs (PSMS)

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cognitive fluctuations. Confusion and a blank stare expression was noted during the evaluation. average and low average with only 50% retention), and visuospatial construction of a complex figure, suggesting areas of sequencing of digits (deficient to average), learning and recall of contextual information (deficient to list (borderline impaired to deficient), and decreased functional abilities. He demonstrated improvements in the average to borderline impaired), graphomotor sequencing (borderline impaired to deficient), learning of a word Comparison with prior results obtained on 03/01/2019 revealed declines on measures of verbal fluency (low

disturbance, agitation, depression, apathy, irritability, nighttime behaviors, and changes in appetite for an overall The NPI-Q completed by his wife (severity=12; distress=25) indicated problems with disinhibition, motor Self-report of depression was elevated (GDS=19), but he did not endorse elevated levels of anxiety (GAD-7=4). moderate to extreme level of familial distress.

findings, his diagnosis of dementia, and the breadth and severity of his cognitive impairments and fluctuations, it Lewy Body Dementia (Dementia with Lewy Body or Parkinson's Disease Dementia). Based on his cognitive functioning, and visuospatial functioning with significant functional declines. His dementia taken together with characterized by deficits in the areas of verbal and nonverbal episodic memory, processing speed, executive Mr. Brockman's pattern of neuropsychological performance indicated dementia of mild to moderate severity was opined that Mr. Brockman was unable to participate and aid in his own defense, and he was unable to recall his parkinsonism, cognitive fluctuations, and REM Behavior Disorder remained consistent with a diagnosis of a

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manipulate this information in a logical manner that would allow him to make comparisons and weigh his options. and demonstrate a thorough understanding of the relevant elements of the issues surrounding the case and

testosterone on his own. He is taking levodopa but he was unsure of his medication regimen as he noted his wife legs and an issue with his rotator cuff from tension and lifting weights. He noted that he discontinued taking his Mr. Brockman reported that his right hand tremor has progressed. He reported overall muscle weakness in his Current Concerns and General Condition: Mr. Brockman and his son, Robert, participated in the clinical interview. backwards and catch himself. He has not had any actual falls in which he has injured himself. manages his medication box. He noted that he is continuing to use his balance board, but he tends to fall

difficulties and attempts to google to find the word for which he is searching. when he is attempting to complete forms. He stopped driving $1\,\%$ years ago. He has increased word finding forgets names of familiar individuals. He is disoriented to month and day of the week, which his family has noted same question again without insight. He forgot the passcode to unlock his phone, and he lost his phone. He processing speed is slower. He noted declines in his decision making abilities. He repeats himself and asks the evaluated. He noted, in particular, his short-term memory and his working memory have declined and his Mr. Brockman and his son described that his cognition has declined since December 2019 when he was last

floor, or a table and wait to see if it moves. yelling out in his sleep more often. He has decreased appetite with weight loss of 11lbs. He craves ice cream. He sleep due to anxiety. He relies on a sleeping aid (trazadone) a couple of times per week. He stated that he was hallucinations. Sleep was described as adequate but he wakes up more often at 3am and is unable to get back to He denied heightened general anxiety, personality or behavioral changes, suicidal ideation, and auditory they have transitioned to working remotely. He is continuing to take Wellbutrin which has stabilized his mood. difficult and his "morale is not what it used to be." He is more apathetic. Due to COVID-19, his activities have Emotional Functioning: Mr. Brockman reported that his mood is "not good." He described that business has been denied well-formed visual hallucinations, but he described that he will see things that look like bugs on a shirt, the been limited. He continues to work from home. He noted that the company did not have to lay anyone off and

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did not find any evidence of any tampering or that anyone had visited inappropriate websites. During this time, exiting the residence during the evening. The family had the computer hard drive analyzed by a third party and suicidal information. Mr. Brockman took pictures of the screens, which were actually Yahoo answer pages not computer was on and was unlocked. He stated that the computer was open to pages from the dark web and door opening and closing and his son's car driving away. Mr. Brockman went to his office and reported that his for a couple of hours. He left the house around 7pm. His father woke up at 5am on Sunday and heard an external on 10/17/2020 and 10/18/2020 with his father. Robbie reported that he went to visit his father on Saturday night During a telephone call on 11/10/2020, Mr. Brockman's son, Robbie, described a delusional incident that occurred Mr. Brockman became overly concerned with when he would get his computer back asking numerous times per broken into his computer. The alarm had not been tampered with and there was no one on video entering or had broken into his computer. Once he was told otherwise, he thought someone else had entered the house and related to the dark web or suicide. He was convinced that his son had returned to the house during the night and

Previous Cognitive Complaints: Mr. Brockman reported declines in his short-term memory over the past 3 to 4 years. Previously, he and his family reported that he repeats himself, loses possessions, loses his train of thought

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code to unlock his telephone. He is unable to multi-task. recall details from his daily activities even later in the day. His procedural memory has also declined as he has tasks. His short-term memory has continued to decline, and he is repeating himself more often. He is unable to performance reviews. She reported that he has increased initiation problems. He noted that it takes him longer confused. His wife noted that he was having difficulties at work and she had to help him type all of his employee fluctuates on a daily basis from minute to minute. She described that he has "blank times" that he appears more making is also slowed, and he has difficulties multi-tasking. Mrs. Brockman described that her husband's cognition changes and mild stuttering in his speech. His speech is slowed and he has slowed response latencies. His decision (He stopped driving $1\,\%$ year ago). He has increased difficulties with following directions. His wife noted spelling complete tasks. His wife noted that he is clumsy getting out of the car and hits curbs while driving and parking and is tangential. He forgets names of new individuals and of familiar locations. He also finds it more difficult to forgotten how to tie a tie or to use a remote control for their television. She noted that he does not recall the to process information at work. His wife described that he sits at work for many, but he does not accomplish his

Brockman denied current use of tobacco or illicit drugs or a remote history of substance misuse/abuse. He quit history is unremarkable for movement disorders or dementia. Psychiatric history is notable for depression. Mr. the head with a hammer and may have suffered a concussion. He did not lose consciousness. Familial medical surgery, and excision of a melanoma. He reported that when he was in the sixth grade he was hit on the top of medication was increased, he had increasing clumsiness. Surgical history is notable for tonsillectomy, cataract February 2019. His wife noted a mild motor improvement when he first started on the medication, but when the and then it went away. He was told that he might have had a visual headache. He began taking levodopa in which he saw a bar of color on a spectrum that was moving. He noted he had this visual illusion for 20 minutes hospitalized for a prostate infection and pericarditis four years ago. He reported an episode of vision changes in increased balance problems. He has plantar fasciitis, which reduces his exercise ability. He reported that he was recurrence, hypercholesteremia, glaucoma (mild), erectile dysfunction, tremor, micrographia, back problems and TIA/stroke, or migraines. drinking alcohol two to three years ago secondary to his atrial fibrillation. He denied a history of seizures, Medical History: Medical history is remarkable for hypothyroidism, atrial fibrillation, bladder cancer with

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worse physically and mentally despite taking levodopa, with a "zombie-like effect" as described by his wife. criteria for DLB; however, he acknowledged that he meets criteria for dementia. Mr. Brockman noted that he was Jankovic noted that because Mr. Brockman denied hallucinations and cognitive fluctuations that he does not meet movement disorder. He was diagnosed with postural instability gait disorder subtype (PIGD) of parkinsonism. Dr. Dr. Joseph Jankovic Evaluation: Mr. Brockman was evaluated by Dr. Joseph Jankovic on March 13, 2019 for his

practice clock drawing to test his functioning. Dr. Yu's differential diagnoses included Dementia with Lewy Bodies fluctuations in his father's decision making abilities with good and bad days. It was noted that his son has him were reported by his wife and son. His son noted that his father's cognitive ability fluctuates, with episodes of patch on 3/13/2019. Anosmia was reported for 10 years. Memory, word finding, and slowed processing speed was performed showing significant loss of dopaminergic signal, and he was started on Sinemet and the Exelon Memory loss was dated to November 2017 in a medical chart note. suggestive of Dementia with Lewy Bodies or Parkinson's Disease Dementia. It was noted that the time course and fluctuations in cognition were more "blankness" associated with less interaction alternating with improved cognition. His son also noted cognitive <u>Dr. Melissa Yu Evaluation</u>: Mr. Brockman was evaluated by Dr. Melissa Yu on March 20, 2019 for his memory loss. Dr. Yu medical note stated that a DATSCAN

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carbidopa/levodopa25/100mg 2 tablets tid, stool softener, Exelon 2 patches. He noted that he also takes a Medications: Wellbutrin 100mg tid, trazodone 50mg at night, Synthyroid .75mg, Eliquis 2.5mg bid, aspirin, regimen of vitamins and supplements.

reported that he was a good student. He is Chairman and CEO of Reynolds and Reynolds Company. earned a BA in Business and attended graduate school for one year in Marketing at The University of Florida. He a diagnosis of an Autism Spectrum Disorder. He currently lives with his spouse in their private residence. He Social History: Mr. Brockman has been married for over 50 years, and they have one son, who is reported to have

validity; therefore, the following results are thought to be an accurate estimation of his current cognitive abilities. to be an accurate estimation of his current cognitive abilities. He passed embedded measures of performance and friendly. He lacked insight into the severity of his cognitive impairments. The following results are thought set task. He exhibited cooperative test-taking behavior, and his attitude towards the examiner was appropriate follow directions, and he often needed repetition of directions due to confusion. He lost place frequently during tangential without insight. There was no evidence of paraphasias. He showed moderately decreased ability to speech was coherent, but at times he appeared confused, particularly with following directions, and he was be confused at times even in the middle of tasks that he originally was completing accurately. Conversational were adequate for the testing session. His cognition fluctuated throughout the testing session. He appeared to appropriate but somewhat flat. Eye movements were unremarkable. Vision (with corrective lenses) and hearing notable on drawings but did not interfere with his performances. His mood was pleasant, and affect was clean. He exhibited slowed, unsteady gait and slowed motor behavior. He evidenced a mild tremor which was and was accompanied by his son who participated in the clinical interview. General appearance was neat and Behavioral Observations: Mr. Brockman was tested during a single session as an outpatient. He arrived on time

MEASURES ADMINISTERED

Memory II-Older Adult, Logical Memory I-Older Adult, Logical Memory Recognition-Older Adult, Visual Information, Similarities, and Visual Puzzles); Wechsler Memory Scale-4th Edition (WMS-IV subtests: Logical Series Attention Test (VSAT); Wechsler Adult Intelligence Scale-IV (WAIS-IV subtests: Coding, Digit Span, Interference Test (Stroop subtests: Color, Color-Word, and Word); Trail Making Test (TMT subtest: Trails A); Verbal Complex Figure Test-Meyers Version; Semantic Verbal Fluency Test (SVF version: Animals); Stroop Color-Word Revised (HVLT-R); Neuropsychological Assessment Battery (NAB subtest: Naming); Praxis Examination; Montréal Cognitive Assessment (MoCA); Clock Drawing Test; Controlled Oral Word Association Test (COWAT his son. Mr. Brockman did not complete the Trail Making Test (TMT subtest: Trails B) measure due to Reproduction I, Visual Reproduction II, and Visual Reproduction Recognition). Clinical Interview with patient and cognitive/behavioral problems. FAS); General Anxiety Disorder 7-item Scale; Geriatric Depression Scale; Hopkins Verbal Learning Test-

NEUROPSYCHOLOGICAL FINDINGS

performance compared to the reference group for that measure (i.e., Z-score) based on peers of similar age, gender, and education background as appropriate. This criterion is equivalent to a Standard Score <78, T-score <35, or a Scaled Score of <5). The following clinical descriptors identify performance with the range of Standard Scores (average=100, standard deviation=15) indicated in parentheses: Very Superior (>130), Superior (120-129), High Average (110-119), Average, (90-109), Low Average (80-89), Borderline (70-79), and Deficient (<69). For diagnostic purposes, a cognitive deficit is considered a performance score that is >1.5 standard deviations away from the mean in the direction of poor

is below expectation. He was incompletely oriented (5/6, missing the date) and short-term recall was 0/5. He Mental Status: Evaluation of Mr. Brockman's general mental status on the MoCA revealed a score of 19/30, which

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He also had difficulties with serial subtractions and verbal fluency. to complete, and he attempted the drawing of the cube twice unsuccessfully. He named 2/3 pictured animals. with set shifting, drawing a cube, and placing the hands on a clock face. These three tasks took him 15 minutes was aided by category cueing for one word and multiple choice cueing for 3 words. He demonstrated difficulties

IV) and obtained scores ranging from extremely low to average yielding a pro-rated Full Scale IQ estimate of 80 Intellectual: Mr. Brockman was administered subtests from a measure of general intellectual functioning (WAISwhich is in the low average range.

color naming were deficient. Mental processing speed for manual code transcription was extremely low. backward, and 3 digits when re-ordering them in ascending sequence. Speed of single word reading and speed of speed and for accuracy. Immediate auditory attention span for digits was borderline with 5 digits forward, 3 digits Performance on a simple visual-motor sequencing task requiring scanning and mental tracking was deficient with Attention / Concentration: Attention and mental tracking for overlearned verbal sequences was deficient for

task requiring scanning, tracking, and set-shifting was impaired and the task was discontinued. was deficient. His abstract verbal reasoning was average. Performance on a complex visual-motor sequencing Executive: Mr. Brockman's ability to inhibit a dominant verbal response in the face of incongruent visual stimuli

memory assessment, 9/12 target words were correctly identified, 5 false positive errors were committed, with delayed recall was in the deficient range with 0.0% retention which falls within the deficient range. On recognition learning for a semantically-categorized word list across 3 trials was deficient (3, 3, and 6 words per trial), and Retention of initially learned material was 33.3%. Recognition memory was high average (20/23). Incremental contextual material was borderline impaired (SS=5). Delayed recall of the stories was borderline impaired (SS=4). discrimination accuracy in the deficient range. Memory: Recall of culturally-based general knowledge was average. Immediate recall of verbally presented

deficient (SS=2). Immediate recall of basic geometric figures was borderline impaired (SS=5). Delayed recall of the designs was impaired (1/7). Retention of the initially learned material was 0.0%. Recognition memory was borderline

was deficient with 9 exemplars generated. Confrontation naming of pictured objects was high average (NAB Form Language: Lexical fluency was low average with between 8 to 12 words generated per trial. Semantic fluency

wrote the numbers 12-7 in the right half of the clock. He did not maintain the hand size differentiation to the second and third tic mark for "10 after 11." When asked to copy a clock, he omitted the number 10 and asked to draw a clock, he drew a clock face and the numbers 12, 3 and 5, with 13 tic marks and two hands pointing and the 11 for "10 after 11," and he attempted to place the hands first prior to writing in the numbers. When later and impaired when copying a model (CDT=7/10). On command clock on the MoCA, he drew the hands to the 10 puzzle pieces was low average. Visuoconceptual ability to draw a clock was impaired to command (CDT=6/10) present, and he reported that he was unable to perform this task. His spatial reasoning ability to mentally arrange copy design was borderline impaired. After 5 minutes of attempting to copy this design, the gestalt was not Visual-Perceptual: His drawing of a complex geometric design scored in the deficient range. Time required to

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intransitive classes of praxis were intact. Motor Functioning: Mr. Brockman is right-hand dominant. On formal examination, buccofacial, transitive, and

the future, declines in memory, downhearted and blue, worthlessness, lack of excitement for life, difficulty as though something negative is going to occur, unhappiness, helplessness, preferring to stay home, worry about activities and/or lack of interest, boredom, lack of hope regarding the future, generally poor spirit/mood, feeling endorsed the following, suggestive of probable depression (GDS=20): presently unsatisfied with life, terminating a face valid measure used to assess cognitive, emotional and physical symptoms of depression, Mr. Brockman Mood / Personality: On a self-report measure of anxiety, his responses fell in the mild range (GAD-7=5/21). On and general declines in thinking skills. beginning new projects, poor energy, difficulties with concentration, lack of enjoyment first thing in the morning,

SUMMARY AND IMPRESSION

are, as far as I know, true, and the opinions in the report are genuinely held by me and the report contains neuropsychological evaluation as a component of a forensic evaluation. The factual matters stated in this report reference to all matters I consider significant. Brockman is a 78 year-old, right-hand dominant, Caucasian male who underwent an independent

current neuropsychological and emotional status. abilities. The testing environment was optimal and the following results are considered a valid estimate of his impairment. It is noted that neuropsychological tests were chosen to best assess Mr. Brockman's cognitive putting forth full effort and was not exaggerating or embellishing the nature and extent of his cognitive It is this examiner's opinion based on the testing conducted and behavioral observations that Mr. Brockman was

(TOPF=114, from March 2019 evaluation). His MoCA was 19/30 (total), 5/6 (orientation), and 0/5 (short-term which is a significant decline from his estimated premorbid intellectual functioning in the high average range Mr. Brockman currently operates in the low average range of general intellectual functioning (WAIS-IV FSIQ=80), elevated (GAD-7=5). recall), which is moderately impaired. Self-report of depression was elevated (GDS=20), and anxiety was mildly

information, naming, verbal fluency, and verbal and visual reasoning. and complex visuospatial functioning. His intellectual functioning subtest scores declined from his last evaluation set shifting), learning and recall of prose material and a word list, learning and recall of visual material, and basic and written processing speed, executive functions (including working memory, problem solving, inhibition, and Mr. Brockman demonstrated borderline impaired to deficient performances on measures of basic attention, oral ranging from the deficient to the average range. He continues to demonstrate average scores on fund of

Comparison with prior results obtained on 12/03/2019 revealed the following pattern of interim changes:

Declines were found in the areas of:

- Intellectual functioning (Full Scale Index: average to low average)
- Semantic fluency (low average to deficient)
- Inhibition (borderline impaired to deficient)
- Graphomotor sequencing (further in deficient range)

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- Basic attention (forward and backward: average to low average; sequencing: average to bordelrine
- Learning of prose material (average to borderline impaired)
- Delayed recall of prose material (low average to borderline impaired)
- Visuospatial construction (Clock drawing and Rey-O)

No interim Improvements were found as compared to his performance on 12/03/2019

diagnosis of his movement disorder, cognitive fluctuations, and REM Behavior Disorder continue to suggest episode. His current cognitive pattern and his parkinsonism, taken together with his dementia at the time of hallucinations; however, he has experienced visual illusions, brief visual hallucinations, and a recent delusional visuospatial functioning with significant functional declines. Mr. Brockman denies experiencing well-formed visual deficits in the areas of verbal and nonverbal episodic memory, processing speed, executive functioning, and neuropsychological performance continues to indicate a dementia of mild to moderate severity characterized by throughout the evaluation with confusion and impaired abilities to follow instructions. Mr. Brockman's pattern of Dementia with Lewy Bodies. His cognitive profile demonstrated interim cognitive declines across all domains declines noted from his evaluation in March 2019. He continued to demonstrate significant cognitive fluctuations Mr. Brockman's current cognitive functioning was impaired across all domains assessed, with significant interim

impairments and fluctuations, it remains my opinion that Mr. Brockman is unable to participate and aid in his own elements of the issues surrounding the case and manipulate this information in a logical manner that will allow is for continued cognitive decline. He is unable to recall and demonstrate a thorough understanding of the relevant defense. Due to the neurodegenerative nature of this disease and the lack of effective treatments, his prognosis Based on the current cognitive findings, his diagnosis of dementia, and the breadth and severity of his cognitive him to make comparisons and weigh his options.

It is this examiner's opinion based on record review, behavioral observations, patient interview, and current and previous neuropsychological assessments.

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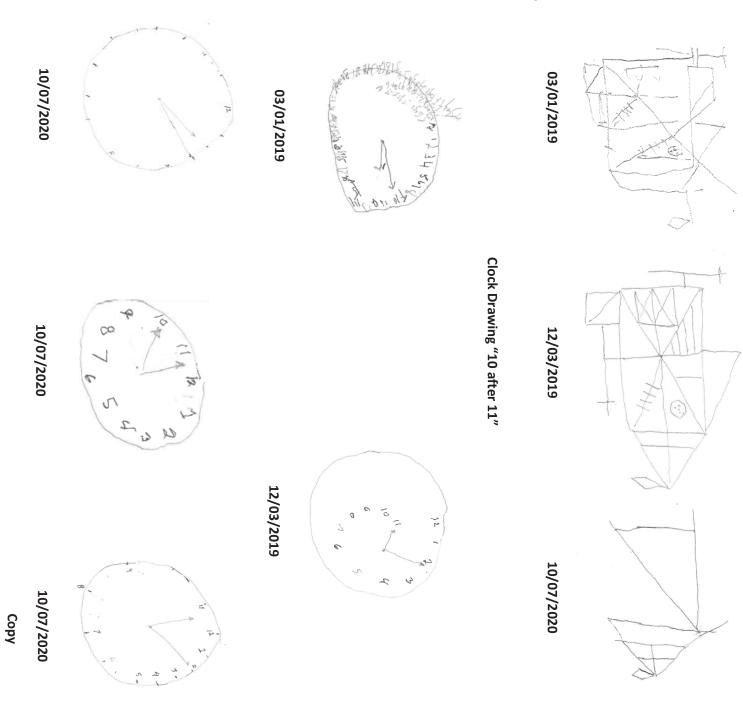
Michile K York, PhD

Board Certified Neuropsychologist License #31159

EXHIBIT S

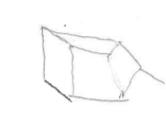
Examples of visuospatial performances for Mr. Brockman Filed 12/08/20 Page 107 of 108

Rey Complex Figure Test – Copy of a Design



Copy of a cube 10/07/2020

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in support of Defendant Robert T. Brockman's Motio Mr. Brockman is Competent to Assist in His Defense	in support of Defendant Robert T. Brockman'	the law firm Jones Day, counsel for the defendant Robert T. Brockman.	New York, the United States Supreme Court and various other federal courts.	 I am a member of the bars of the 	I, Peter J. Romatowski, declare as follows:	DECLARATION OF	DECT ADAPTON OF		Defendant.	ROBERT T. BROCKMAN,	v.	Plaintiff,	UNITED STATES OF AMERICA,	NICOLA MICO	SAN ER ANG	NORTHERN DIST	UNITED STATE	Attorneys for Defendant ROBERT T. BROCKMAN		jvarnado@jonesday.com JONES DAY 717 Texas, Suite 3300 Houston, TX 77002 Telephone +1-832-239-3600 Facsimile +1-832-239-3600 Neal J. Stephens (State Bar No. 152071) nstephens@jonesday.com Vincent Doctor (State Bar No. 319408) vdoctor@jonesday.com JONES DAY 1755 Embarcadero Road Palo Alto, CA 94303 Telephone: +1-650-739-3939 Facsimile: +1-650-739-3900							Jason Varnado (State Bar No. 211067)
Defense.	in support of Defendant Robert T. Brockman's Motion For a Hearing to Determine Whether	dant Robert T. Brockman. I make this Declaration	and various other federal courts. I am of counsel to	I am a member of the bars of the District of Columbia, the states of Montana and		DECLARATION OF FEIER J. ROMATOWSKI	BETER I DOMATOWEET	DEFENSE	COMPETENT TO ASSIST IN HIS	HEARING TO DETERMINE	DEFENDANT ROBERT T.	DECLARATION OF PETER J.	Case No. 3.20-cr-00371-WHA	CIDCO DI VIDIOIN	SAN ER ANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT						Facsimile: +1-212-755-7306	New York, NY 10281-047	JONES DAY	New York State Bar No. 1866250	Kathryn Keneally

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enforcement actions by the U.S. Securities and Exchange Commission. I am a fellow of the almost exclusively in white collar criminal defense, and defense of regulatory investigations and 484 U.S. 19 (1987). Since 1986, I have been engaged in the private practice of law, specializing American College of Trial Lawyers Carpenter, 791 F.2d 1024 (2d Cir. 1986), aff'd sub nom. Carpenter v. United States

- of such cases, whether as a witness or a defendant. It is my firm opinion that Mr. Brockman cognitive and other skills that enable individuals to assist effectively in the prosecution or defense in private practice, called as a witness by the government). I believe that I recognize those have testified in a federal grand jury (as a law student) and in a federal criminal jury trial (while in their own successful defense of complex regulatory charges in federal criminal jury trials. includes clients, one of whom was approximately Mr. Brockman's age, who assisted effectively order to gain their assistance in the prosecution or defense of federal criminal cases. cannot do so In the course of that experience, I have engaged with hundreds of witnesses,
- assistance is indispensable to the defense of the Indictment, and he is unable to render it. complexity of this one, whether on behalf of the prosecution or the defense. necessary from knowledgeable witnesses in order to assemble and present in court a case of the From that experience, I also have an appreciation of the participation that is Mr. Brockman's
- addition, we have had countless meetings with Mr. Brockman by telephone at a summer residence in Colorado. Each of these meetings was several hours in length. 2018. person, my colleagues and I met with Mr. Brockman ten times at his home in Houston, and once Between that date and March 2020 when the pandemic prevented further meetings in first met Mr. Brockman when my firm was retained as his counsel in September

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- what we told him, and that he may need to review things several times to understand what he need us to address issues with him more slowly, that he may have some difficulty remembering surprise concerning this diagnosis. He explained that he wanted us to understand that he may explained that he had been diagnosed with Parkinson's disease and dementia. He expressed that meeting by conference call. needed to know. issue that he wanted to raise. He showed me a binder that contained medical reports. legal consequence for the criminal investigation Colorado. Two other Jones Day attorneys, Kathryn Keneally and Georgina Druce, participated in At the outset of the July 18, 2019 meeting, Mr. Brockman told us that he had He never suggested or asked whether this medical condition would have any an
- symptoms consistent with Parkinson's disease, parkinsonism, or Lewy body dementia, or some understand that Mr. Brockman's doctors diagnosed that he has cognitive impairment and other combination of the three We subsequently obtained the medical reports from Mr. Brockman.
- 5 better understand my experience with Mr. Brockman throughout this representation 10. The information provided in the medical reports is consistent with and helped me
- consistently been unable to assist in his defense, either by providing his own account of past provided to him. events, or by providing leads to other evidence. He is unable to review and evaluate documents. have also experienced repeated instances in which he did not retain information that we had In my experience in communicating with Mr. Brockman, I have found that he In certain instances, when we would provide him with information, he would has

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								Defendant.	ROBERT T. BROCKMAN,	ν.	Plaintiff,	UNITED STATES OF AMERICA,		SAN FRANCI	NORTHERN DISTR	UNITED STATES	ROBERT T. BROCKMAN	Attorneys for Defendant	Telephone: +1-650-739-3939 Facsimile: +1-650-739-3900	1755 Embarcadero Road Palo Alto, CA 94303	JONES DAY	Vincent Doctor (State Bar No. 319408)	Neal J. Stephens (State Bar No. 152071)	Facsimile +1-832-239-3600	Houston, TX 77002 Telephone +1-832-239-3939	JONES DAY 717 Texas, Suite 3300	Jason Varnado (State Bar No. 211067) jvarnado@jonesday.com	
						Judge: Hon. William Alsup Place: Courtroom 12		COMPETENT TO ASSIST IN HIS DEFENSE	HEARING TO DETERMINE WHETHER MR. BROCKMAN IS	DEFENDANT ROBERT T. BROCKMAN'S MOTION FOR A	[PROPOSED] ORDER GRANTING	Case No. 3:20-cr-00371-WHA		SAN FRANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT							raesiiine: +1-212-733-7300	Telephone: +1-212-326-3939	250 Vesey Street New York NY 10281-047	kkeneally@jonesday.com JONES DAY	Kathryn Keneally (appearance <i>pro hac vice</i> New York State Bar No. 1866250	47

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									Defendant.	ROBERT T. BROCKMAN,	v.	Plaintiff,	UNITED STATES OF AMERICA,	SAN FRANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT	NODENT 1. DINOCINITIAN	Attorneys for Defendant		Palo Alto, CA 94303 Telephone: +1-650-739-3939	JONES DAY 1755 Embarcadero Road	Vincent Doctor (State Bar No. 319408) vdoctor@jonesday.com	Neal J. Stephens (State Bar No. 152071)	Facsimile +1-832-239-3600	Houston, TX 77002 Telephone +1-832-239-3939	JONES DAY 717 Texas, Suite 3300	Jason Varnado (State Bar No. 211067) jvarnado@jonesday.com	
							Place: Courtroom 12	December 15. 12:00 p.m.	District of Texas	TON LACK OF VENUE AND TO TRANSFER TO THE SOUTHERN DISTRICT OF THE VAC	OF MOTION TO DISMISS IN PART	DEFENDANT ROBERT T.	Case No. 3:20-cr-00371-WHA	CO DIVISION	T OF CALIFORNIA	DISTRICT COURT							тасыныс. тт-212-/35-/300		250 Vesey Street New York, NY 10281-047	kkeneally@jonesday.com JONES DAY	Kathryn Keneally (appearance <i>pro hac vice</i>) New York State Bar No. 1866250	

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27 United States v. Francis, 2008 WL 1711543 (D. Nev. Apr. 11, 2008).	25 United States v. Daewoo Indus. Co., 591 F. Supp. 157 (D. Ore. 1984)	23 United States ν. Cooper, 24 2019 WL 404962 (D. Haw. Jan. 31, 2019).	21 United States v. Coffee, 22 113 F. Supp. 2d 751 (E.D. Pa. 2000).	19 United States ν. Clinton, 20 574 F.2d 464 (9th Cir. 1978)	United States ν. Clines, 958 F.2d 578 (4th Cir. 1992)	16 United States v. Calk, 2020 WL 703391 (S.D.N.Y. Feb. 12, 2020).	14 United States v. Cabrales, 524 U.S. 1 (1998)	12 United States v. Bradley, 13 644 F.3d 1213 (11th Cir. 2011)	10 United States v. Bowdoin, 11 770 F. Supp. 2d 133 (D.D.C. 2011)	8 United States v. Blakstad, 9 2020 WL 5992347 (S.D.N.Y. Oct. 9, 2020)	7 Sturgis v. Goldsmith, 796 F.2d 1103 (9th Cir. 1986).	5 Platt v. Minnesota Min. & Mfg. Co., 376 U.S. 240 (1964)	3 Johnston v. United States, 4 351 U.S. 215 (1956)	2 Cases	1	(a36 3.20-c1-003/11-v
. Nev. Apr. 11, 2008)	ndus. Co., Ore. 1984)	Haw. Jan. 31, 2019)	E.D. Pa. 2000)	1978)	1992)	D.N.Y. Feb. 12, 2020)		ir. 2011)	D.D.C. 2011)	D.N.Y. Oct. 9, 2020)	г. 1986)	Mfg. Co.,			TABLE OF AUTHORITIES	אוייי מספמוויפוניסס ו ווכמ דלו דדו לס ו מ
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DEFENDANT ROBERT T. BROCKMAN'S REPLY IN SUPPORT OF MOTION TO DISMISS IN PART FOR LACK OF VENUE AND TO TRANSFER TO THE SOUTHERN DISTRICT OF TEXAS

Transfer to the Southern District of Texas (the "Motion"), ECF No. 49, should be granted Defendant Robert T. Brockman's Motion to Dismiss in Part for Lack of Venue and to

centered, and docket conditions will allow the case to proceed more expeditiously. factors relevant to venue strongly favor transfer of the entire case to the Southern District of the Texas, where Mr. Brockman has long lived, relevant witnesses and events are likely to be Indictment, and those counts must be dismissed if this case remains here. Moreover, the Foremost, there is no basis for venue in this District for Counts Nine through Fourteen of

. IMPROPER VENUE THROUGH FOURTEEN MUST BE DISMISSED IN THIS DISTRICT FOR THE FOREIGN BANK ACCOUNT REPORT ("FBAR") COUNTS NINE

offense where that offense is committed; also, the site of a charged offense 'must be determined Def.'s Mot. at 17; Gov't Opp'n at 1 (the "Opposition"), ECF No. 63; U.S. Const. Art. III, § States v. from the nature of the crime alleged and the location of the act or acts constituting it."" Federal Rules of Criminal Procedure and the Constitution require that a person be tried for an U.S. Const. Amend. VI; Fed. R. Crim. P. 18 Even the government must acknowledge the "law that is not in doubt: Both Rule 18 of the Cabrales, 524 U.S. 1, 5 (1998) (citations and internal quotations omitted); see United

The offense charged in Counts Nine through Fourteen is defined in

31 C.F.R. § 1010.350(a), enacted under 31 U.S.C. § 5314:

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and shall provide such information as . . . specified in . . . the Report of Foreign other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists Each United States person having a financial interest in . . . a bank, securities, or Bank and Financial Accounts[.]

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(failure to perform alternatives to military service), or the resident district of the defendant. act lies in one of two places: filing should have been received, see, e.g., Johnston v. Courts have uniformly held that venue for charges for failure to perform such a required where the required act should have been performed or a required United States, 351 U.S. 215, 220 (1956) See,

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this case, neither of these places is the Northern District of California United States v. Clinton, 574 F.2d 464, 465 (9th Cir. 1978) (failure to file tax returns). In

government offers no law in support of any of these unprecedented positions here will create no unfairness or undue hardship to Defendant." Gov't Opp'n at 5. The FBAR counts "were not brought here as an exercise in forum shopping, and because trying them Opp'n at 4-5; because (1) venue is proper here for the tax and conspiracy charges in the Indictment, Gov't The government erroneously contends the FBAR counts may be brought in this District (2) "FBAR charges can be brought in any district," Gov't Opp'n at 4; and (3) the

activity is alleged to have occurred. month period," it somehow can bring charges for failure to file FBARs anywhere that the illegal bare allegation that Mr. Brockman failed to file FBARs "while violating another law of the this point is strikingly devoid of any legal citation, and the law is to the contrary United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-First, the government contends that, because each of the FBAR counts contains the Gov't Opp'n at 4. The government's single paragraph on

district] that yielded the funds allegedly laundered." Id. at 6-7 (internal citations omitted) occurred in one district, and not "the anterior criminal conduct [which occurred in another was "defined in statutory proscriptions that interdict only the financial transactions," which specified unlawful activity took place. funds be derived from specified unlawful activity, venue was permitted in the district where the the government's argument that, because an element of the crime of money laundering is that the 524 U.S. at 6-7 (quotation marks and citation omitted). The Supreme Court in *Cabrales* rejected from the nature of the crime alleged and the location of the act or acts constituting it." Cabrales, (emphasis added) The government ignores the fundamental rule that "[t]he locus delicti must be determined Id. As the Court stated, the "nature of the crime alleged"

year in which such relationship exists." foreign country "shall report such relationship to the Commissioner of Internal Revenue for each failure to comply, requires simply that each person with an interest in a financial account in a So too in this case, the regulation that defines the legal duty, and creates an offense for 31 C.F.R. § 1010.350(a) (emphasis added). The venue

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for that reporting offense lies in the district where the defendant resides (the Southern District of Virginia). Texas), or in the district where the FBAR was due to be received (the Eastern District of

more than \$100,000 in a 12-month period." 31 U.S.C. § 5322 violating another law of the United States or as part of a pattern of any illegal activity involving Subsection (b) increases this to \$500,000 or 10 years for violators who fail to report "while provides a \$250,000 fine or up to five years imprisonment for the ordinary violation, and sanctions depending upon the presence (or absence) of aggravating factors: Subsection (a) 31 U.S.C. § 5314, Section 5322 is captioned "Criminal Penalties," and sets out escalating Separate and apart from that definition of the offense in the regulation adopted under

644 F.3d 1213 (11th Cir. 2011) and United States v. Clines, 958 F.2d 578 (4th Cir. 1992). That in any district." Gov't Opp'n at 4, relying on United States v. Bradley. creates expansive venue for the failure to report offense itself. This Court should not be the first. But the government cites no court that has held that this separate sentencing enhancement The government makes the extravagant claim that "FBAR charges can be brought

office, we conclude that venue in the District of Maryland was proper."). 958 F.2d at 583 ("Because [the FBAR form] also provides that filing may occur in any local district that houses a local IRS office." Bradley, 644 F.3d at 1252; see also Clines 958 F.2d at 583. Those cases found this latter alternative dispositive in favor of nationwide it to any local IRS office." Bradley, 644 F.3d at 1252 (emphasis added); see also Clines 90–22.1, could be filed either by mailing it to the IRS in Detroit, Michigan, or by hand-delivering venue. "Thus, for purposes of venue, the form [was] 'required' to be filed in any and every At the time of the offenses alleged in *Bradley* and *Clines*, "[t]he form in question, Form

Financial Crimes Enforcement Network (FinCEN) located in Vienna, Virginia. Def.'s Mot. at Since tax year 2013, the IRS has required that FBARs be filed electronically, directly with the the law in 2013—the first year the Indictment alleges that Mr. Brockman failed to file an FBAR The best that can be said for the "nationwide venue" argument is that the IRS wrote it out of

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argument is as disingenuous as it is out-of-date

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acknowledge that the change renders Bradley and Clines irrelevant as precedent electronically, and not in any office of the IRS as before," Gov't Opp'n at 5, but fails to $17.^{1}$ government admits that "beginning on July 1, 2013, FBARs had to be

may be deposited in the postoffice of the United States," proper in Seattle because "the filing of the statement need not be at the office in Washington, but Supreme Court rejected the government's contention that prosecution for failure to file was required to be filed in Washington, D.C. with the Commissioner of General Immigration. illogic of that non-sequitur was rejected by the Supreme Court 104 years ago. anywhere." electronically from anywhere," as if that might imply that "FBAR charges can be Lombardo, 241 U.S. 73 (1916), the defendant in Seattle was charged with failure to file a report was a post office. The government leaves dangling the observation that "[n]ow FBAR forms can be filed Gov't Opp'n at 5. Id. at 76 Worse than the stale argument from Bradley and Clines, the so as to provide venue wherever there In United States v. brought

any differently. Gov't Opp'n at 5 is meaningless, as even the government cannot explain why the FBAR statute should be analyzed original). place of performance of the request," meaning the place where "application must be sent to every possible location from which a filing could be sent. result is the same: the place fixed for performance is where the filing was to be received, not received by, and then approved. 185 F. Supp. 3d 55, 58 (D.D.C. 2016) (finding in failure-to-file case that proper venue was "the Although fewer cases have addressed this issue since the switch to electronic filing, the The fact that this authority construed "a different statute," .. regardless of from where that request is sent") (emphasis in See, e.g., United States v. as the government remarks, Hassanshahi,

unfairness or undue hardship to Defendant," Gov't Opp'n at 5 may remain in this District because, per the government's phrasing, the charges brought here as an exercise in forum shopping, and because trying them here will create no \Im The government's final attempt at articulating its positiondoes not cure the lack of venue -that the FBAR charges "were not

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¹ See also https://www.fincen.gov/how-do-i-file-fbar; https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf, at

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for the FBAR counts, and flatly contradicts the reality of this case

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attempt to keep this case at a location distant from Mr. Brockman's residence any authority, to keep the FBAR counts in this District lacks legal support and is an improper where any required FBAR filing would have been received. of Texas, the place where Mr. Brockman has lived for over five decades and where, if in fact and law he was required to file, any failure to do so took place; or the Eastern District of Virginia, The government has two choices for venue for the FBAR charges: the Southern District The government's attempt, without

case remains in this District, Counts Nine through Fourteen must be dismissed of the entire case to a district where venue would also clearly lie for the FBAR counts. a case in which, independent of the FBAR venue issue, the facts and law amply support transfer received or where the defendant resides. And the government is seeking to put this stake down in venue for failure to file an FBAR in a district other than where the filing would have been The government would have this Court do what no court has done: find that there is But if this

I. SUPPORT TRANSFER AND NO FACTOR SUPPORTS DISTRICT THE PLATT FACTORS FAVOR TRANSFER, AS SEVERAL FACTORS TRIAL IN THIS

district. roughly half of its Opposition in a misdirected argument exaggerating the basis for venue in this presumption favoring the prosecution's choice of venue in criminal cases. See United States v. District, the issue on this Motion is not whether there is any basis for venue in this District, but Fritts, 2005 WL 3299834, at *2 (N.D. Cal. Dec. 6, 2005) (Alsup, J.). The government expends whether this case would be better moved to another district. As this Court has observed, and as the government does not dispute, there is Gov't Opp'n at 1-6. Apart from the FBAR counts, for which there is no venue in this

[the] defendant's business unless the case is transferred; (6) expense to the parties; (7) location of ten factors set forth by the Supreme Court in Platt v. Minnesota Min. & Mfg. Co. likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of 376 U.S. 240, 243-44 (1964). Def.'s Mot. at 8; Gov't Opp'n at 6-7. To reiterate, those factors "(1) location of [the] defendant; (2) location of possible witnesses; (3) location of events As no one can dispute, the test for deciding whether to transfer venue is determined by the

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involved; and (10) any other special elements which might affect the transfer." counsel; (8) relative accessibility of place of trial; (9) docket condition of each district or division 376 U.S. at 243-44; see also, e.g., Fritts, 2005 WL 3299834, at *2

Texas. gloss over or misconstrue the reasons why this case better belongs in the Southern District of even cite the Indictment. Gov't Opp'n at 7-12. Instead, the government's ipse dixit seeks no evidence or potential testimony when discussing the Platt factors, 3 nor does the government 16; Keneally Decl. and accompanying exhibits.² Mr. Brockman's Motion was supported with detailed submissions. See Def.'s Mot. at 8-In response, the government's Opposition offers

"Platt factor" # 1: the location of the defendant

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Mr. Brockman's long-time home in Houston, Texas weighs strongly in favor of transfer.

records and other evidence" of travel to other locations, Gov't Opp'n at 7, in no way diminishes tethered" to the district where he has made a home with his wife and family and built a business, for over five decades. as cavalier as it is groundless. See Gov't Opp'n at 7. The bland reference to "private jet There is no dispute that Mr. Brockman currently resides in Houston, and has lived there The government's assertion that Mr. Brockman is "not particularly

prosecutions—that "a defendant should ordinarily be tried, whenever possible, where he

the paramount principle—which is even the government's stated policy for criminal tax

resides." United States v. Williams, 2013 WL 4510599, at *2 (D. Haw. Aug. 22, 2013) (quoting

United States v. Aronoff, 463 F. Supp. 454, 457 (S.D.N.Y. 1978)); see also U.S. Dep't of Justice,

Criminal Tax Manual § 6.01[2] (2012) (stating policy "generally to attempt to establish venue for a

criminal tax prosecution in the judicial district of the taxpayer's residence or principal place of

business."). This principle is particularly applicable in a case with a complex and likely lengthy

See, e.g., United States v. Cooper, 2019 WL 404962, *2 (D. Haw. Jan. 31, 2019) (noting

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submitted in support of the Motion. ECF No. 49-1. ² "Keneally Decl." refers to the Declaration of Kathryn Keneally, affirmed November 30, 2020 and

appropriate references to the record"). contentions made in support of or in opposition to any motion must be supported by an affidavit or declaration and by See Criminal L.R. 47-2 (requiring compliance with Civil L.R. 7-5, which in turn requires that "[f]actual

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that a longer trial makes the location of the defendant's home more important)

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nothing "amorphous" about Mr. Brockman's condition, which goes far beyond "malaise." conditions that, in Mr. Brockman's case, have resulted in dementia. Pool Decl. ¶ 5. some combination of the three. Pool Decl. $\P 5.5$ These are degenerative, progressive, non-curable Mr. Brockman state that he has Parkinson's disease, parkinsonism, or Lewy body dementia, or "amorphous malaise." impairment. Pool Decl. ¶¶ 3-5.4 Instead the government cynically dismisses Mr. Brockman's Mr. Brockman's medical condition that has manifested in movement disorders and cognitive Finally, nowhere in its Opposition does the government even acknowledge the gravity of Gov't Opp'n at 9. The doctors who have diagnosed and treated There is

participation at his own trial"). should be granted when a defendant's "ill health would prevent a defendant from full Decl. existing cardiac condition, and could exacerbate the overall progression of his symptoms." physician that facing legal proceedings at some distance from his home would create a risk "to his ¶ 10; see also United States v. Bowdoin, 770 F. Supp. 2d 133, 142 (D.D.C. 2011) (transfer The government simply has no answer to the attestation by Mr. Brockman's primary care

B. "Platt factor" # 2: the location of possible witnesses

the length or importance of any witness testimony, to support its contention that this factor favors See Nov. 17, 2020 Hr'g Tr. at 15:20–15:25, ECF No. 47; Dec. 1, 2020 Hr'g Tr. at 11:23–12:25 ECF No. 61. Yet the government does not identify a single witness by name, much less explain the Northern District of California. See United States v. Daewoo Indus. Co., From the first pretrial conference, the government has boasted that it is "ready for trial."

a Hearing to Determine Whether Mr. Brockman is Competent to Assist in His Defense, ECF No. 64-1.

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required more than a bald statement of numbers and general location of witnesses in the cases 591 F. Supp. 157, 160 (D. Ore. 1984) (granting Rule 21(b) transfer; "The Ninth Circuit has

December 8, 2020. See Declaration of Kathryn Keneally in Support of Defendant Robert T. Brockman's Motion for defense's Motion For a Hearing to Determine Whether Mr. Brockman is Competent to Assist in His Defense on on examinations conducted over a period of nearly two years, have been submitted to this Court in support of the in support of the Motion. ⁴ "Pool Decl." refers to the Declaration of James L. Pool, M.D., affirmed November 25, 2020 and submitted ⁵A total of seven diagnostic and forensic reports from three medical doctors and a neuropsychologist, based ECF No. 49-2

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position are not demonstrated to be anything more significant than document custodians nature of their testimony described."). The potential witnesses the government identified by transfer in tax evasion prosecution; "The cases require that the witnesses be identified, and the fifty-six witnesses but refuses to disclose their identities or location," except by general area); where the issue of witness convenience is addressed;" here "the government proposes to call United States v. Francis, 2008 WL 1711543, at *2 (D. Nev. Apr. 11, 2008) (granting Rule 21(b)

city of Austin, Texas, less than 200 miles from the federal courthouse in Houston. nowhere acknowledges the importance of Robert Smith ("Individual Two" in the Indictment) and foundation for the records." records [who] sometimes are not called at trial because the parties stipulate to the authenticity of in the government's Opposition, they cannot be regarded as anything more than "custodians of Opposition. See Gov't Opp'n at 3. Since no other role is attributed to these or any other witness back-office administration of Vista's investment funds that is emphasized in the government's three, local Vista facts witnesses at trial," Gov't Opp'n at 8, presumably to testify to the local Vista's founder, a key witness and government cooperator who resides in Vista's headquarters 21, Ex. F, Ex. G, Ex. H, Ex. I, Ex. J, Ex. K, Ex. M. The government states that it "expects to call at least one, and possible [sic] as many as Fritts, 2005 WL 3299834, at *3. By contrast, the government Keneally Decl.

a technically sufficient case for venue in this District. Fritts, 2005 WL 3299834, at *3 refute that these entities' role is no more than a thin thread by which the government has claimed dealings with Mr. Brockman, or the counter-party to whom Deutsche Bank might sell the debt entities are alleged to have sold debt to Deutsche Bank eleven years ago with no knowledge of or Opposition ignores the defense's summary from the Indictment: at most, these two unnamed Two in the Indictment – in the Northern District." Gov't Opp'n at 8. Motion glosses over the fact that there are at least two victim entities – Entity One and Entity testimony might be, much less why it compels a trial in this District. Gov't Opp'n at 8. The "gloss over" this fact, offering no description of who might testify from either Entity, or what that Indictment ¶¶ 178-79, 183, 189; see Def.'s Mot. at 6-7, 11. The government offers nothing to The only other reference by the government under this factor is its complaint that "the So too does the government

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would not waste judicial resources" showing of inconvenience when transfer sought late in proceedings") (citing *United States v* This case is at its earliest stages, which is itself a factor that supports timely transfer. See United first production of some of the 1.1 terabytes (the equivalent of 22 million pages) of discovery for failing to identify specific trial witnesses, Gov't Opp'n at 8, after delaying until last week the 2018 WL 3706836, at *7 (E.D. Cal. Aug. 3, 2018) (granting transfer in part because Polizzi, 500 F.2d 856, 901 (9th Cir. 1974)); see also United States v. Prasad States v. Testa, 548 F.2d 847, 857 (9th Cir. 1977) (noting that it is "proper to require deflect its own default in describing the evidence, the due to the early filing of the transfer motion).⁶ government faults the defense "transfer greater

assisting Mr. Brockman with asset planning. Decl. could address disputed questions central to the charges. of the compelling information regarding the location of witnesses than the government's Opposition. Gov't Opp'n at 8-9 entities in Houston. And counsel is aware of numerous subpoenas that the AsKepke, a lawyer in practice in Houston, Texas, had a central role in establishing the trusts and Houston. Mr. Smith lives in Austin, a short drive from the Southern District of Texas. the defense set out, the Indictment, Mr. Smith's Statement of Facts, and counsel's knowledge N, Ex. O, Ex. P. Ex. F, government's investigation all indicate that trial witnesses-All that aside, the defense's Motion still contains significantly more detailed and more Ex. . Ķ Ex. M at Statement of Facts ¶ 1. Keneally Decl. ¶ 36. Mr. Brockman's tax preparers are located in Houston. The government's Opposition ignores all of this Keneally Decl. Ex. M at Statement of Facts ¶ Mr. Smith, in turn, has alleged that Carlos government has served on individuals and -are likely to be centered in and around -particularly witnesses who Keneally Decl. ¶ 35 Keneally

But no trial can take place before Mr. Brockman is determined to be competent, and that

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²⁰²⁰ WL 703391, at *1 (S.D.N.Y. Feb. 12, 2020) (deciding transfer motion nearly a year after the unsealing of the indictment); *United States v. Blakstad*, 2020 WL 5992347, at *4 (S.D.N.Y. Oct. 9, 2020) (deciding motion in October 2020 when trial was originally scheduled for November 2020 and was delayed only due to COVID-19). States v. Spy Factory, Inc., 951 F. Supp. 450, 460 (S.D.N.Y. 1997) (deciding transfer motion one month before trial "be a trial setting" five days after the transfer motion was decided); United States v. Calk, was set to begin); United States v. Shayota, 2015 WL 9311922, at *6 (N.D. was made. ⁶ In contrast, the government cites cases that were close to or on the eve of trial when the transfer motion See Testa, 548 F.2d at 857 (defendant "moved for change of venue only eight days before trial"); United Cal. Dec. 23, 2015) (hearing scheduled to

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defendant is generally entitled to the same safeguards that would apply at trial. See, e.g., Sturgis the location of witnesses essential to this hearing must be included in the *Platt* analysis. determination will require a competency hearing.⁷ Gov't Opp'n at 9. A competency hearing is a "critical stage" of a criminal trial, for which the Goldsmith, 796 F.2d 1103, 1109 (9th Cir. 1986). The government offers nothing to dispute that

teleconferencing provisions for criminal proceedings). Mot. at 12 n.10 (§ 4241(a) competency hearings not permitted under CARES Act video Mr. Brockman has a right to an in-person, rather than a video-conferenced, hearing. See experts regularly appear remotely at competency hearings," Gov't Opp'n at 9, and ignores that Opp'n at 8-9. The government also offers no support for its contention that "[w]itnesses and an nearly insurmountable hardship. *Compare* Def.'s Mot. at 11-12 and Pool Decl. ¶ 8 with Gov't no rebuttal to the fact that requiring the medical witnesses to testify in this District would impose by hiring experts," Gov't Opp'n at 12, crosses a line that prosecutors should not approach. experts," Gov't Opp'n at 8, and an example of "wealthy defendants [buying] their venue simply The government's crass dismissal of Mr. Brockman's treating physicians as "compensated Def.'s It is

hearing can be fairly held at which Mr. Brockman's doctors can be available to testify in person. The competency hearing government suggests. a fundamental due process safeguard, and cannot be brushed aside as facilely as the There is only one choice that may be made between a largely remote hearing, or a hearing Only a transfer to the Southern District of Texas will ensure that this

", *Platt* factor" # 3: location of events likely to be in issue

identify a single event that is likely to be in issue that took place in this District. the Indictment took place largely between Mr. Brockman in Houston and Evatt Tamine" of California. "Individual One" Nowhere does the government come to grips with the fact that "the events put in issue Def.'s Mot. at 13. By contrast, the government's argument on this factor does not in the Indictmentin various other locations, but never in the Northern District Gov't Opp'n at by

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⁷ As instructed by the Court, the defense filed its Motion For Mr. Brockman is Competent to Assist in His Defense on December 8, a Hearing to Determine Whether 2020. ECF No. 64.

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identified in the Opposition, "could fail completely in the Southern District of Texas." by the government's objection that "venue for several Counts in the Indictment," nowhere 9-10. Opp'n at 10. tally the locus of events described in the Indictment." The weight of this factor is not cancelled by disparaging the defense for "attempting to Gov't Opp'n at 9-10. Nor is it overcome Gov't

D. "Platt factor" # 4: location of records

should not be weighed against transfer. See United States v. Coffee subpoenas it has served on individuals and entities in Houston—those documents in particular documents from Houston and transported them to San Francisconecessary documents if the case were transferred. To the extent the government has collected true, electronically accessible documents can be accessed just as easily in Houston as in San already in the Northern District or are electronically accessible." Francisco, and the government does not suggest it would create any burden to transport any Gov't Opp'n at 10. Contrary to the government's contention, this factor does not "weigh[] against transfer." The government asserts that all "relevant documents and records are either Gov't Opp'n at 10. -as suggested by the many Even if

"Platt factor" # 5: disruption to the defendant's business

create venue by its act of shipping documents, especially as they can readily be shipped back.").

F. Supp. 2d 751, 756 (E.D. Pa. 2000) ("[I]t would be odd indeed to allow the Government to

already precarious physical and cognitive condition. competency hearing and a possible trial away from his doctors, his family, and his home. consider the disruption to Mr. Brockman, who is in failing health, if he is forced to face criminal proceeding. Pool attested, this disruption may have serious detrimental consequences to Mr. Brockman's The Court in Platt specifically addressed venue with regard to a corporate defendant in a Platt, 376 U.S. at 243-44. It is more than reasonable, by analogy, to Pool Decl. at ¶ 10

F. "Platt factor" # 6: expense to the parties

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tried in this District. Only transfer to the Southern District of Texas will allow all of the counts in expensive." The government states: "Transferring only a portion of this case would be enormously Gov't Opp'n at 10. This is exactly the defense's point: the FBAR counts cannot be

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the Indictment to be addressed in a single proceeding

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G. "Platt factor" # 7: location of counsel

say that this factor is equally balanced, and should not affect the transfer analysis attorneys who have met with him in person throughout the investigation and subsequent to the appearance. fungible local counsel," Mr. Brockman's attorneys are no more fungible. prosecutions. prosecutors are based in Washington D.C. identifies one attorney in the Southern District of Texas and three in the Northern District of Indictment are located in Houston, New York, and Washington. Keneally Decl. ¶ 39. this case, see Keneally Decl. Ex. E, Ex. M, and which has nationwide jurisdiction over tax are with the DOJ Tax Division, which has had a lead role in the investigation and prosecution of California. Mr. Brockman's defense team is not limited only to those lawyers who have formally made In listing counsel who have made appearances to date in this matter, the government Gov't Opp'n at 11. While defense counsel is capable of defending him in either district, all of the 28 C.F.R. 0.70(b). While the government asserts that the "local AUSA... The government also candidly notes that three Gov't Opp'n at 11. The three D.C.-based prosecutors See Gov't Opp'n at 11. of the four It is fair to is not a an

H. ", Platt factor" #8: relative accessibility of place of trial

Opp'n at 11. The government does not refute that both courthouses are easily accessible. This factor is neutral See Gov't

"Platt factor" #9: docket condition of each district or division involved

disposition of felony cases, and an overall faster docket than the Northern District of California. more active judges, fewer pending cases per judge, a far-shorter median time from filing to This penultimate factor is among the most compelling: the Southern District of Texas has

then available, and which reflected the likelihood of a speedier disposition of this matter in the Southern District of Texas.⁸ The defense's Motion relied on June 2020 statistics, which were the most recent that were Since the Motion was filed, the Administrative Office of the Courts

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^{19, 2020).} https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0630.2020.pdf at 36, 66 (last visited See Federal Court Management Statistics, Administrative Office of the Courts, l Nov.

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published updated statistics, reflecting the operation of the courts through September 2020:9

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otal number of active judges ases pending per judge ases pending per judge ases pending to ledian time from filing to sposition in felony cases verage time from filing to trial in verage time from filing to trial in increase) NDCA 19 (no change) 12.4 months (1.2 month) (1.2 month) increase) 4.2 months (0.2 month) increase) 20.3 months 44.5 months increase) 46.6 month increase)			
(no change) 870 cases (no change) 12.4 months (1.2 month increase) 44.5 months (15.2 month increase)		NDCA	SD Texas
870 cases (no change) 12.4 months (1.2 month increase) 44.5 months (15.2 month increase)	otal number of active judges	14 (no change)	19 (no change)
12.4 months (1.2 month increase) 44.5 months (15.2 month increase)	ases pending per judge	870 cases (no change)	770 cases (9 case increase)
44.5 months (15.2 month increase)	ledian time from filing to sposition in felony cases	12.4 months (1.2 month increase)	4.2 months (0.2 month increase)
	verage time from filing to trial in vil cases	44.5 months (15.2 month increase)	20.3 months (4.6 month decrease)

felony cases increased in both districts, the gap widened by one month in favor of the Southern months in the Southern District of Texas. And while the median time from filing to disposition in despite the pandemic, the average time from filing to trial in civil cases actually declined by 4.6 the average time from filing to trial in civil cases lengthened significantly in this District. But District of Texas. 10 The updated data is telling. In the midst of the COVID-19 pandemic, it is no surprise that

courthouse, but even they are set to resume on January 19, 2021. 13 continue to hold in-person hearings. 12 Only jury trials are currently on hold in the Houston planned resumption of some limited proceedings, if possible, on January 4." By contrast, the in each district. In this District, "all in-person, in-court proceedings" are suspended, "with a Houston courthouse of the Southern District of Texas remains open, with judges permitted to These trends are likely to continue in light of the most recent orders as to court operations

⁹ See Federal Court Management Statistics, Administrative Office of the Courts

^{9, 2020)} https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2020.pdf at 36, 66 (last visited Dec.

¹¹ https://www.cand.uscourts.gov/ (last visited Dec. 9, 2020).

COVID-19.pdf (last visited Dec. 11, 2020) 24% 20Eighth% 20Supplemental% 20Court% 20Operations% 20in% 20Houston% 20and% 20Gal veston% 20During% 20 https://www.txs.uscourts.gov/sites/txs/files/Special%20Order%20H-2020-¹² In re: Court Operations in the Houston and Galveston Divisions under the Exigent Circumstances Created by the Covid-19 Pandemic, Special Order H-2020-24 (Nov. 19, 2020), available at

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case will proceed more expeditiously in the Southern District of Texas than in this District. All available evidence regarding docket conditions therefore continues to suggest that this

J. "Platt factor" # 10: "Special Elements"

prognostication of what will come next in the pandemic this matter would be better off in San Francisco, it is seeking to write on an unreliable the government is seeking to rest on current infection rates to contend that everyone involved in infection rates in San Francisco and Houston, not to transfer this case. The government contends that it would be safer, given the current comparative COVID-19 Gov't Opp'n at 11-12.

San Francisco, instead basing venue primarily on the allegation that money moved through this in Houston for most of his adult life, where he also worked, prepared and filed taxes, consulted failing physical health who lacks the mental competency to assist with his defense. District before being transferred elsewhere with attorneys, and attended to his health. The irrefutable point here is that the sole defendant in this case is a 79-year-old man in The Indictment does not allege a single act by him He has lived

Southern District of Texas. Under all of the circumstances, this case should be transferred in its entirety to the

III. CONCLUSION

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Fourteen of the Indictment under Federal Rule of Criminal Procedure 12(b)(3)(A)(i) for improper District of California to the Southern District of Texas, and (ii) dismiss Counts Nine through (i) transfer this case pursuant to Federal Rule of Criminal Procedure 21(b) from the Northern venue, or in the alternative, transfer Counts Nine through Fourteen to the Southern District of For the reasons set forth above and in Defendant's Motion to Transfer, this Court should

Dated: December 11, 2020 Respectfully submitted, JONES DAY ROBERT T. BROCKMAN NEAL J. STEPHENS Counsel for Defendant s/ Neal J. Stephens

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UNITED S ⁻ NORTHERN (C/	TRANSCRIPT ORDER Please use one form per court reporter. CJA counsel please use Form CJA24 Please read instructions on next page.								COURT USE ONLY DUE DATE:							
1a. CONTACT F Mari Rey	HONE NUMB -3939							ADDRESS nesday.com								
1b. ATTORNEY Neal Ste	PHONE NUM)-3939						AIL ADDRESS @jonesday.com									
4. MAILING AD Jones Day 1755 Emb		5. CASE NAME United States v. Brockman						6. CASE NUMBER 3:20-cr-0371								
	ORTER NAME (FO	R FTR, LEAVE	EBLANK AND CHECK BOX	☐ API	8. THIS TRANSCRIPT ORDER IS FOR: APPEAL CRIMINAL In forma pauperis (NOTE: Court order for transcripts must be attached) NON-APPEAL CIVIL CJA: Do not use this form; use Form CJA24.											
9. TRANSCRIPT	T(S) REQUESTED (Specify portion	on(s) and date(s) of proce	eding(s) for wh	nich transcrip	t is requeste	d), format(s) a	& quantity ar	nd delivery	type:						
						FORMAT(S) (NOTE: ECF access is included rchase of PDF, text, paper or condensed.)				c. DELIVERY TYPE (Choose one per line)						
DATE	JUDGE (initials)	TYPE (e.g. CMC)	PORTION If requesting less than full hea specify portion (e.g. witness or the specify portion) is a specify portion (e.g. witness).	ring, (email)	TEXT/ASCII (email)	PAPER	CONDENSED (email)	ECF ACCESS (web)	ORDINARY (30-day)	14-Day	EXPEDITED (7-day)	3-DAY	DAILY (Next day)	HOURLY (2 hrs)	REALTIME	
12/15/2020	WHA	Motion			0	0	0	0	0	0	0	0	•	0	0	
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10. ADDITIONAL COMMENTS, INSTRUCTIONS, QUESTIONS, ETC:																
ORDER & CERTIFICATION (11. & 12.) By signing below, I certify that I will pay all charges (deposit plus additional). 12. DATE 12. DATE 12. SIGNATURE 12. SIGNATURE 12. DATE																

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Save as new PDF

Case 3:20-cr-00371-WHA Document 69 Filed 12/15/20 Page 1 of 12

21 20 18 17 16 13 11 10 19 15 14 12 9 S 4 ω ∞ \neg 9 12 Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) Attorneys for the United States of America Trial Attorneys CHRISTOPHER M. MAGNANI (Maryland) COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF AMERICA 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < Plaintiff Defendant NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION Time: Date: HEARING DEFENDANT'S MOTION FOR A COMPETENCY UNITED STATES' RESPONSE TO Case No.: 3:20-cr-00371-WHA

finally, when the competency hearing will be held. Although the Motion correctly concludes that the will have to review the discovery and evaluate Defendant, when their expert reports will be due and, dictates when Defendant must produce competency-related discovery, how long the designated experts hearing should not be scheduled in isolation. Instead, the Court should issue a scheduling order that Court must hold a competency hearing on its record, it omits significant legal and factual context No. 64) (the "Motion"). The government agrees that there must be a competency hearing, but the The United States respectfully responds to Defendant's motion for a competency hearing (ECF

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January 12, 2021 2:00 PM

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. THE COURT MUST GRANT THE MOTION, BUT ESCHEW ITS PROPOSED ORDER

16 13 12 11 10 15 14 9 S 4 ω ∞ 7 6 1 step was indicted, it would be unwise for a court to rush into a competency hearing with expert evidence especially in a case where the defendant continued to run a multibillion-dollar company, Reynolds opinions of experts he retained and testimony from his wife and friends, the applicable statutory low, and it is satisfied in this case. What the Motion did not explain is that the hearing is hardly the first properly in his defense." As the Motion explained, the threshold for holding a competency hearing that he is unable to understand the nature and consequences of the proceedings against him or to assist requires a competency hearing whenever "there is reasonable cause to believe that a defendant may competency at 18 from only the criminal defendant. Reynolds ("Reynolds"), for almost two years after his alleged diagnosis, and stepped down only after framework contemplates a more searching review of Defendant's claim. In any criminal case, but presently be the adjudication of Defendant's competency claim. Section 4241(a) (and constitutional due process of the process. passing the Insanity Defense Reform Act of 1984, Congress codified the procedures related to suffering U.S.C. Although Defendant may prefer to hold a prompt hearing based only on the from a mental disease or defect rendering him mentally incompetent to the extent §§ 4241 & 4247, and the Court must follow this statutory framework through

examination of the defendant be conducted," and Section 4247(b) establishes statutory requirements opportunity for its experts to evaluate Defendant. The Court should also appoint its own expert and/or observe defendants in both clinical and non-clinical settings for a prolonged period of time. malingering is a concern, as it allows trained Bureau of Prisons mental health professionals and staff examiner." certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such such examinations. For example, competency examinations must be conducted by "a licensed or remand Defendant to one Defendant has already retained and been evaluated by his experts, the government should have the same General for placement in a suitable facility." to be examined for a reasonable period, but not to exceed thirty days, . . . to the custody of the Attorney Section 4241(b) gives the Court discretion to "order that a psychiatric or psychological 18 U.S.C. § 4247(b). of the BOP facilities that conducts competency evaluations (there The statute also vests the Court with discretion to "commit the person Id. A custodial placement is appropriate in cases where

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facility at FMC Fort Worth in Texas). present their finding at the hearing. has determined which experts will have the opportunity to examine Defendant, draft expert reports, and The Court should not schedule any competency hearing until it

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evaluating experts have sufficient time to review the records before making their conclusions and issue a subpoena, and request the Court to order their production under 45 C.F.R. § 164.512(e), which present symptoms") (emphasis added). requested by the government in order to comply with the statute's requirement of producing an expert writing their expert reports. Any expert evaluator will need to review the historical medical records administrative proceedings," and Fed. R. Crim. P. 17(c)(1), which will allow early production to ensure excepts from HIPPA's privacy protections disclosures made in connection with "judicial and his insistence of hiding relevant evidence from evaluating experts and the Court, the government will the proceedings. On November 19, 2020, the government requested relevant medical information from competency, should be afforded the benefit of all relevant evidence in deciding this matter. Therefore, report to the Court. Defendant and, on December 10, the defense team indicated that it viewed the attachments to the Motion before scheduling a hearing, the Court will first need to decide associated discovery matters the whole of its discovery and does not intend to produce anything further.1 The Court as factfinder, as well as every expert that evaluates Defendant and offers a view of his See 18 U.S.C. § 4247(c)(1) (requiring the report to include "the person's history and If Defendant persists in related to

evaluations and testing of Defendant by government (and Court-appointed) experts, and submission of competency hearing which also includes deadlines for discovery, evaluation of the discovery by experts, Section 4241(c) expert reports In sum, the government requests that the Court issue a scheduling order for the requested

II. STATUTORY POST-HEARING PROCEDURES

competency. As discussed above, holding a competency hearing is not the first step in adjudicating It is also not the last. The post-hearing procedural landscape will depend on whether the

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR A COMPETENCY HEARING Case No.: 3:20-CR-00371-WHA

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meantime to avoid subsequent delay. Defendant did not produce them voluntarily, and recommended Defendant start gathering them in the In its letter, the government also noted that it would request an order for production if Ex.

13 12 11 10 15 14 9 S 4 ω ∞ \neg 9 1 there substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings applicable statute, it must remand him to custody for further evaluation.³ competent, proceedings will commence.² permissive commitment, observation and study regime applicable to juveniles) competence." defendant, who has been deemed incompetent, for study of the defendant's potential for restorability permit the proceedings to go forward; or (B) the pending charges against him are disposed of according to reasonable period of time, not to exceed four months, as is necessary to determine whether there ("[T]he court shall commit the defendant to the custody of the Attorney General."). Court finds Defendant competent by a preponderance of evidence. to law; whichever is earlier." Id. In sum, § 4241(d) "provides for a mandatory commitment of period of time until (A) his mental condition is so improved that trial may proceed, if the court finds that General, in turn, "shall hospitalize the defendant for treatment in a suitable facility . . . for such a go forward. is a substantial probability that within such additional period of time he will attain the capacity United States v. LKAV, 712 F.3d 436, 441 (9th Cir. 2013) (comparing § , , The statute provides for further hospitalization "... for an additional reasonable If the Court finds Defendant incompetent, under the If the Court finds Defendant See 18 U.S.C. The Attorney 4241(d) to the § 4241(d)

III. FACTUAL BACKGROUND

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investigate his claims pre-indictment. Motion also suggests that the government acted in bad faith for declining Defendant's invitation to their working relationship, and that his symptoms are confirmed by a team of esteemed doctors. to malinger, that he has been unable to assist his attorneys and alerted them of his symptoms only to aid was indicted, his claims are deserving of healthy skepticism. Only sunlight on Defendant's historical to other contemporaneous events, and the fact that Defendant remained CEO of Reynolds until after he The Motion suggests that Defendant first complained of symptoms before he developed a motive Considering the context of Defendant's claims, when compared

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unexpected surprises after the conclusion of the upcoming competency hearing incapacity that would bar prosecution. On the contrary, his record of pre-pandemic leisure travel should decline to entertain a future claim of physical incapacity that is brought only after the Court finds suggests the opposite is true. him competent. To be clear, the government does not believe Defendant suffers from physical Unless Defendant raises it in time to be considered along with his competency claim, the Court Nonetheless, the government raises this issue now to avoid any

conducted almost entirely at FMC Butner (in North Carolina) and MCFP Springfield (in Missouri). ³ Unlike initial BOP competency evaluations, these competency restoration evaluations are 4

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A. The Timing of Defendant's Claims

government pre-indictment (and replicated below) omits relevant contemporaneous activities that are those events in proper context. Like the instant Motion, the timeline Defendant shared with the probative of his mental capacity and, frankly, cast doubt on Defendant's narrative Defendant offers only the information he wants the Court to see, and not the information to put

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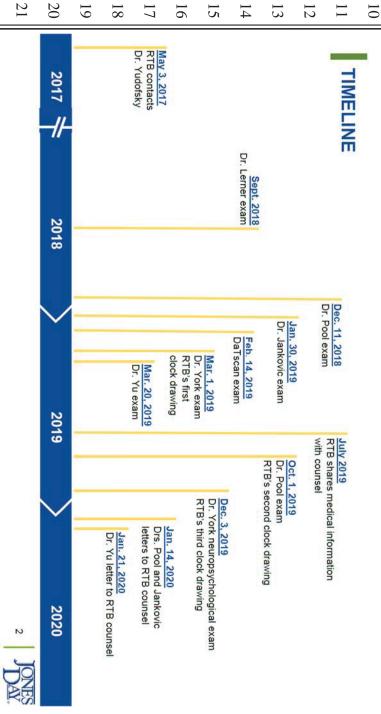
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the background." please restrict your contact with the USA generally such that except for these few-you tend to fade into that "[a]lthough you have several personal friends in Houston that I am sure you want to maintain unannounced everything would be in encrypted digital form." "[o]perate as much as possible in a paperless manner-such that if someone were to come in your door have been long-standing. As early as 2010, he directed Evatt Tamine, his professional nominee, to Defendant's efforts to thwart his detection, investigation, and prosecution by law enforcement *Id.* at 3. Defendant even gave Tamine detailed instructions on how to smuggle Ex. 2 at 2. He further instructed Tamine

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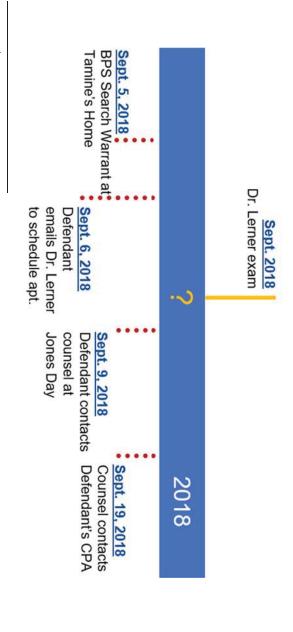
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refused to fully disclose his historical medical records, he has apparently suffered his share of health claims that Dr. Lerner was the first doctor to witness his symptoms.⁴ Although Defendant has thus far significant because, although Defendant has not disclosed the exact date of the appointment, Defendant that Defendant reached out to his urologist, Dr. Seth Lerner, to schedule an appointment. Ex. 7. considering other events occurring at the time. For example, on September 5, 2018, the Bermuda Police a search warrant on Tamine's home. problems over the years. It is notable that none of his doctors-Service raided Tamine's home, invading Defendant's secret offshore world. It was the very next day oncologists, cardiologists, or anyone else-Evidence of Defendant's early claims of neurocognitive problems cannot be appreciated without A fuller timeline might look like this: -noted dementia symptoms until after the authorities executed -not his general practitioners This is



attorneys as early as September 9, 2018 and, by September 18, Defendant's attorneys were in touch with provided by Defendant's company shows communications between Defendant and his Jones Day Although counsel has not indicated when they began representing Defendant, a privilege log Ex. 8; Ex. 9.

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B Defendant's Financial Ties to Baylor and Relationship with Dr. Stuart Yudofsky

examined by Dr. James Pool, which the Motion cites as the first doctor to diagnose Defendant with dementia and refer him to further specialists. Ex. 11. The bulk of Defendant's Baylor donations (\$25M) Defendant also approved another million-dollar donation from Reynolds a few days after he was Scientific Advisory Board of the Brockman Medical Research Foundation. Ex. 12 at 3-5 made between 2011 and 2014 to fund Dr. Stuart Yudofsky, a Baylor psychiatrist and Chairman of Defendant has donated tens of millions of dollars to the Baylor College of Medicine. Ex. 10

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declines to note that he is intimately involved in Defendant's personal life, professionally indebted Motion describes Dr. Yudofsky, who is a neuropsychiatrist, as Defendant's "friend." Defendant, and well acquainted with Tamine Defendant offers (and offered to the government prior to indictment) a 2017 email between him and Yudofsky as supposed evidence that he had symptoms before his motive to feign dementia ripened. Although the Indictment alleges that Defendant was aware of the current investigation in However, Dr. The

his degree difficult and worrying"5 rapport-building with Dr. Yudofsky "work[s] as a strong barrier against an attack from the IRS." knew Tamine was merely Brockman's nominee. out your instructions - whatever they might privately believe," thereby suggesting that Dr. Yudofsky Defendant that his communications with Dr. Yudofsky and others were "undertaken with the requisite annual 2016 performance appraisals for Defendant. of authority, i.e. I do not believe that anyone has any basis to suggest that I am merely carrying As alleged in the Indictment, Tamine served as Defendant's professional nominee and wrote evaluation, Tamine tells Defendant that he "helped Stuart out of a position he found very and noted that his relationship with Dr. Yudofsky was "very strong." Indictment at ¶ 10. Ex. 13 at 3. Tamine also told Defendant that his In his 2011 evaluation, Tamine told Ex. 6 Id.

freezing 2017, Tamine emailed Defendant a memorandum on issues to deal with Bermuda The years of rapport-building may have been drawn upon during a 2017 crisis. Defendant's accounts. Ex. 15. One of the problems Tamine identified was that he Commercial Bank On July 30,

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UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR A COMPETENCY HEARING Case No.: 3:20-CR-00371-WHA The issue appears to be related to who would succeed Dr. Yudofsky after he retired. Ex.

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phone." becoming subjected to increased scrutiny and proposed that he no longer travel to the United States with a computer or telephone and, instead, keeping "all I need at Stuart Yudofsky's office including Ex. 16 at 4-5. Defendant concurred with the proposal. Ex.

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9 S 4 ∞ \neg 6 September 2018 email, he sought no further medical treatment or evaluation until after the search of Tamine's house further correspondence on the subject. Indeed, despite Defendant's apparent concern in the May 3, 2017 Defendant, he took no action other than the single emailed response to Defendant's email. Defendant provided no evidence that Dr. Yudofsky examined Defendant, provided a referral, or engaged in any It is important to note that despite Dr. Yudofsky's expertise and close relationship with

the his encrypted email system to order Tamine, the "trustee" and not the trust that owned Reynolds on paper, was running the deal. example, on June 12, 2011, Defendant wanted to explore selling Reynolds but needed to justify why he, a significant history of generating fraudulent correspondence for use in future proceedings. designed to seek medical advice or create a paper trail. send Defendant a letter asking Defendant to explore the potential sale. words Tamine should use in the letter to Defendant. Defendant's and Dr. Yudofsky's inaction raise the question of whether Defendant's That concern is elevated because Defendant has Id.of the trust that owns Reynolds on paper, to To solve this problem, he used Ex. 17. Defendant even dictated email was

encrypted email asking Tamine to send Dr. Yudofsky "an open email" that Tamine had been considering planted correspondence orchestrated by Defendant. On August 1, 2015, Defendant sent Tamine ar Tamine sent an unencrypted email to Dr. Yudofsky stating exactly that on August 13, 2015. formation of a medical research foundation and inviting Dr. The evidence suggests that on at least one other occasion, Dr. Yudofsky was the recipient of Yudofsky to be the chair. Ex. Ex. 19

Defendant's isolated email to Dr. Yudofsky in May 2017 should not be viewed as conclusive of whether U.S. border) at Dr. Yudofsky's office, and Defendant's history of planting fraudulent correspondence comfortable storing Tamine's communications devices (devices that he was afraid might be seized Yudofsky, the \$25M gift by Defendant to Dr. Yudofsky's employer, the fact that Defendant felt Defendant actually suffered symptoms on that date Taking all of this into account—the close personal relationship between Defendant and Dr at the

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Ω Defendant's Contemporaneous Behavior was Inconsistent with Present Claims

rapidly diminishing metal capacity, signs of a more robust mental acuity trail in his wake man with an IQ in freefall. assist in his defense." One of Defendant's lawyers described Defendant as a man who "has consistently been unable to Romatowski Decl. (ECF No. 64-3) at ¶ 11.6 Yet, while presenting to his defense attorneys and doctors as a man of His doctors describe Defendant as а

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represented him in those matters did not convey any of the difficulties of which current defense counsel and yet Defendant and his civil attorneys never raised Defendant's alleged mental incapacity or decline January and September 2019, were within weeks of medical evaluations by Doctors Jankovic and Pool, now complains. It is noteworthy that the Defendant's sworn testimony in these antitrust matters, in or out of the ordinary in Defendant's ability to respond to the questions posed, and the lawyers who September 2019, Defendant provided sworn testimony in a separate antitrust matter, again giving long demonstrating a superior knowledge of the documents than the examiners themselves. Id.⁸ apparently to great effect. as the CEO of a multibillion-dollar company accused of engaging in anticompetitive practices. related to running Reynolds.⁷ thus far refused to provide the relevant medical discovery news of his deposition performance with the doctors upon whom he now relies because Defendant has as an issue during the proceedings. Furthermore, the government does not know if Defendant shared and cogent answers. In this deposition, Defendant said that he prepared with his civil attorneys for two days in advance between his visits with the Baylor team of doctors, Defendant engaged in significant activities The attorneys who questioned him in those proceedings observed nothing unusual Id. at 11. The most mentally taxing may have been being deposed in January 2019 In the deposition, Defendant gave cogent answers, often Then, in

UNITED STATES' RESPONSE TO DEFENDANT'S MOTION FOR A COMPETENCY HEARING Case No.: 3:20-CR-00371-WHA

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⁶ Notwithstanding, between September 2018 and March 2020, Defendant and Romatowski had eleven in-person meetings, each "several hours in length," in addition to "countless meetings...by *Id.* at ¶ 5

emailed his yacht captain to reminisce about the excellent tides they had on a trip over 18 months Ex. 21, and arrange future travel logistics. Fy. 22. Eq. 32 21, and arrange future travel logistics. Ex. 22; Ex. 23 prior,

⁽explaining the inefficiency of internal accounting); 315-16 (navigating a privilege issue); 334-39 (explaining "opcodes" in detail); 350 ("As you probably can tell, I'm – I'm into the details, big time."). structures); 78-79 & 312-13 (explaining relevant legal requirements); 116 (interpreting contract); (explaining software); 160 (explaining why he only retains 6-12 months of his emails); 227-32 The deposition is replete with examples, but some are on pp. 10-23 (explaining his trust 151-53

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Defendant prepares for deposition & is deposed in a

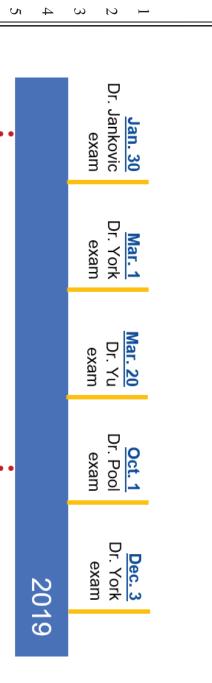
class action antitrust case

antitrust matter

Defendant gives sworn testimony in a separate Jan. 14-17, 2019

Sep. 18-19

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function on a higher level than most. In recent emails, Defendant demonstrates a command of his run his company. Throughout 2020, Defendant penned numerous emails suggesting he is still able to observations of his doctors are inconsistent with his continued ability, at least until he was indicted, to important decision). of new car sales), Ex. 25 (Defendant discusses bid and makes teaching points to Reynolds's President). business. See, e.g., Ex. 24 (Defendant identifies risk associated with an acquisition, noting the slowing Ex. 26 (after announcing a new COO, Defendant tells him they need to talk every day about any Defendant now reports further mental evaluation and a prognosis of marked decline. But the

started the company and had been a board member and President for decades. part of his company. On May 10, 2020, he drafted a lengthy memo to Vice-Chairman Robert Nalley I am in the final 20 percent of my life (if I am lucky)" but that he planned on working four to five years tells Nalley that he is letting other executives take bigger roles because of "fatigue-plus recognition that outlining his plans for the company. Ex. 27. Nalley was the first employee Defendant hired when he "helping teach the next generation everything I know about how to run the company efficiently." Defendant made it clear to Reynolds associates that he was not leaving and remained an integral In the email, Defendant Id. at

reorganization of the executive structure of Reynolds. Court, and the manner in which he lived his life is most starkly revealed by in the June 3, 2020 The discrepancy between the picture Defendant presented to doctors, the government, and this This reorganization took place almost two

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4 ω ∞ \neg 6 S 1 even months after attorneys for the defendant told the government that he was so impaired that he should not represented that Defendant was so impaired that he could not assist them, raises considerable question ımportance about Defendant's claim leadership, he informed the new COO that "you and I should be talking every day about any decision of of Chairman and CEO. Defendant's company. be indicted. that is cooking." Evidence of such impairment, however, was entirely absent from the reorganization of While other executives were shuffled around, Ex. 28 at 2. Ex. 26. While Defendant did say his focus would be on training the new Correspondence like this, during a Defendant retained the positions period in time when his lawyers

V THE INAPPROPRIATENESS OF EVALUATING THIS ISSUE PRE-INDICTMENT

any investigate Defendant's mental state prior to indictment. the these reasons, the government appropriately declined an investigation would have been inappropriate pre-indictment. would be particularly injurious in the event Defendant truly suffers from degenerative ailments. providing effective assistance), a pre-indictment investigation would have served as a delay tactic, as Defendant's diagnosis, but disagreed on its forensic import (i.e. whether Defendant was capable of determinations. evaluation of competency claims. It empowered the Courts, not prosecutors, to make competency disagreement could only be settled by the passing the Insanity Defense Reform Act of 1984, Congress created a statutory framework for Nevertheless, Defendant now complains that the United States declined his invitation to Court, as Congress intended, Putting aside evidence described herein, such Even if the government agreed with post-indictment. The delay For all

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< CONCLUSION

 \neg 6 S 4 ω 1 evaluation by independent medical experts who are afforded the full scope of relevant information. motion requesting discovery and medical examinations of Defendant as described herein schedule for the events that must precede such a hearing. hearing on this record. That hearing, however, should not occur until Defendant is subjected to further Therefore, the Court should decline to schedule a competency hearing until after it has determined a The competency statute and constitutional due process requires the Court hold a competency The United States will soon file a separate

Respectfully submitted this 15th day of December, 2020

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United States Attorney DAVID L ANDERSON

Senior Litigation Counsel COREY J. SMITH Department of Justice Corey J. Smith

Tax Division

Assistant United States Attorney MICHAEL G. PITMAN

Attorneys for United States of America

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U.S. Department of Justice

United States Attorney Northern District of California

November 19, 2020

(408) 535-5061 FAX (408) 535-5066

VIA EMAIL

Neal James Stephens
Kathryn Keneally
Jason Scott Varnado
JONES DAY
nstephens@jonesday.com
jvarnado@jonesday.com
kkeneally@jonesday.com

Re: United States v. Robert T. Brockman, 3:20-cr-00371-WHA (N.D. Cal.)

Dear Counsel:

results, labs, imaging, and notes, and is not limited to medical records associated with the reports those records are maintained by Mr. Brockman or the provider. This request includes test to Mr. Brockman by any physician or other medical professional in the last ten years, whether documents related to any medical and/or psychological treatment, diagnosis, or advice provided motion. Specifically, I would appreciate it if you would provide to the government all representations the defense may make about Mr. Brockman's medical condition as part of that information that will help the government (and, ultimately, the Court) evaluate any from the following practitioners: you have already provided. At the very least we would expect this request to include records to evaluate Mr. Brockman's capacity under 18 U.S.C. § 4241. I am writing to request We understand you expect to file a motion in the above captioned matter asking the Court

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- James Poole, MD,
- Michele York, PhD,
- Seth Paul Lerner, MD,
- Joseph Jankovic, MD,
- Melissa Michelle Yu, MD,
- Stuart Yudofsky, MD, and
- Mr. Brockman's general practitioners, as well as any practitioner who has diagnosed, treated, or consulted on the issues Mr. and Mrs. Brockman described to Pretrial Services

you withdrew in October, in order to permit his providers to discuss Mr. Brockman with government personnel, including experts. We would also request that Mr. Brockman provide HIPPA waivers to replace the waivers

bring any unresolvable disputes to the Court's attention more quickly. Early disclosure of this material may allow us to narrow any issues in dispute, and to

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or appointed experts be given access to the materials requested above prior to any competency intend to provide them voluntarily. determination, so you may be wise to begin collecting them now regardless of whether you Please note that we expect to ask the Court to order that the government and any retained

covered by HIPPA, or otherwise sensitive, and would handle it accordingly. Naturally, we recognize that information provided in response to this request may be

like to discuss further. Please feel free to let me know if you have any questions or concerns, or if you would

Very truly yours,

DAVID L. ANDERSON United States Attorney

s/ Michael G. Pitman MICHAEL G. PITMAN Assistant United States Attorney

Memo to: Evatt Tamine

Date: February 5, 2010

Subject: Performance Review

What went well:

your logical evaluation of circumstances Once again your self evaluation is remarkably accurate. This in itself is a compliment to

target bonus. Overall you had a very excellent year which results in full attainment of your \$100,000

Goals for 2010

- Endeavor to deal with the Founding Partners and Arboria issues as best you can to be cautious about acquiring too high a profile. This will include participating in any mediation. However there is ongoing need
- 2 Monitor the ongoing legislative process in the USA and other jurisdictions and facilitate whatever restructuring ends up being required
- ω Take over the financial reporting processes from James Gilbert. achieved is: The goal to be

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- ledger with financial reports are produced entry accounting system with proper journals, schedules, and general establish use of an accounting software package that is a true double
- amounts for all lines on the P&L and Balance sheet as well as for the current 6 month period -where the financials have columns for the previous 5 years that show all
- 4 Conduct a semi-annual financial review of all entities face to face by the end of the first half of the year
- 5) Scan the box of miscellaneous documents and add them to the image database
- 0 Reorganize the boxes of original documents such that historical files of discontinued entities are segregated into their own box(es)
- Request an asset ledger from Mountain Queen, Inc. that details all of the real purposes of calculating depreciation – but they need to be asked estate, improvements, and furnishings. They should be keeping this for

8 Endeavor to continue to harden the RADMIN and email server reliability by acquiring additional UPS power sources – and if possible – provide for monitoring while you are away.

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- 9) Continue to address the projects on the To-Do List
- 10) Arrange for audited financials for those entities that need to have audits
- 11) Annually verify that there are letters of resignation from all trustees and that Bob has the originals
- Update the To-Do list at least monthly

General Goals for Every Year

- Continue to work to reduce the number of entities as this makes all processes simpler creating more time to focus on investment programs.
- 2 Continue to keep the document image database up to date constantly
- $_{3}$ Continue to keep the entity/significant transaction database up to date constantly
- Publish the Cash Report monthly
- 13) Convert to keeping all email and financial records on an encrypted USB dongle carried in a different location in luggage when traveling abroad
- 14) Continue to update the accounting reports to the document image database
- 15) Operate as much as possible in a paperless manner such that if someone were to come in your door unannounced everything would be in encrypted digital
- 16) Complete adding the documents and significant transactions for superseded entities to the respective databases on a piecemeal basis during the year
- 17) Run Evidence Eliminator at least weekly on your computer
- 18) Keep your computer system running perfectly get whatever you need for maximum productivity and backup
- 19) Get Don's computer environment operating on RADMIN
- 20) Continue basic education in accounting, bookkeeping, auditing, and financial controls

21) Maintain all working entities in good standing so that their legal existence can not be questioned

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- 22) Maintain relationships with service providers bearing in mind that not a lot primarily their financial reporting - Gordon Howard being the key service provider they should be doing which will require constant monitoring of their reports, should be expected from them - never take for granted that they are doing what being a successor to Gordon should Gordon no longer be capable that would be most problematic to replace – look to Peter Mitchell potentially
- To the extent possible, no service provider should become crucial always be thinking about portability and alternate providers should the need arise
- 24) Regardless of the level of non-performance of a service provider, a cordial professional relationship should be maintained - unless a high level policy decision to do otherwise is made
- 25) In the event of non-performance of a service provider or investment, the policy will always be to withdraw quietly - unless a high level policy decision to do otherwise is made
- 26) Continue the excellent work on the spreadsheet for expenses of each service provider such that detail entries by type of expense are kept so as to support the annual expenses for each service provider
- 27) Coordinate the charitable giving initiatives of the AEBCT
- 28) Monitor your levels of daily effort so as to avoid burn-out. Engage in a regular fitness program with proper diet so as to stay in top physical condition.
- directly related to the amount of time you spend in front of your multi-monitor amount of travel that you do for business as your control of everything will be computer system at home in France. Other than your personal vacation travel, I recommend that you conserve the
- 30) Plan your life for healthy, balanced, stable, long-term productivity
- Although you have several personal friends in Houston that I am sure you want for these few – you tend to fade into the background to maintain, please restrict your contact with the USA generally such that except

Compensation

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Your annual remuneration for 2010 will be increased to an annual salary of \$325,000 plus a bonus opportunity of \$125,000.

Conclusion

appreciated. Your continued excellent performance in all aspects of your job are noted and

On Behalf of Spanish Steps Holding LTD

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Sent: From: Permit [permit1@lambdaprime.org] 9/2/2010 4:49:57 PM redfish@lambdaprime.org

Subject:

I would try to do 3).

I would also create two copies on a Mico SD chip that are the size of less than a postage stamp.

I would then carry one concealed somewhere in luggage and I would FED-X the other with some misc correspondence to

yourself in Bermuda.

I would not do 1) or 2)

From: Redfish [mailto:redfish@lambdaprime.org] Sent: Wednesday, September 01, 2010 5:51 PM

To: permit1@lambdaprime.org

Subject: RE:

Bob,

I have no files whatsoever on the laptop itself. There are three options for me:

- problem. I can place the external hard drive with all files elsewhere in my luggage. I did this on the last trip without a
- to a larger drive. I can transfer all files onto a USB key drive, which can be well hidden. At the Bermuda end, I can restore the files
- wipe the drive using EE. will be a long process and is dependent on everything working here in France. Once the file transfer is complete I can Attached a drive with all files to James computer and then do a Radmin file transfer to a drive in Bermuda.

Evatt

From: Permit [mailto:permit1@lambdaprime.org] Sent: Wednesday, 1 September 2010 7:34 PM

To: redfish@lambdaprime.org

Subject: RE:

down to transition to Houston. I will copy off all of my files and run EE on my RADMIN starting tomorrow. I will be clean by Friday morning - when I shut

Your reply here did not address your files or the big document image file

Sent: Wednesday, September 01, 2010 5:16 PM From: Redfish [mailto:redfish@lambdaprime.org]

To: permit1@lambdaprime.org Subject: RE:

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I have considered this issue. I am not going through the US. Your computer and the email server will be carried by me.

and the backup email server on the trip back for Gordon's funeral and encountered not a hint of a problem is duty, however provided I make full declaration of the value it is unlikely I will even be stopped. I took Don's laptop There is no issue transiting through London since I am only in the country for a few hours. The only concern in Bermuda

Still, it would not hurt to transfer your files off your laptop and then restore them on Sunday

nothing appears on the monitor – even with the power plugged in. You are right that the email server is a problem to boot. Anyone trying to do so would think the laptop broken since

cannot be used on 110, then I will copy the backup files onto a smaller drive that runs off the USB without AC power. The S and T drives here in France are powered, but I will need to unplug them on Friday to check the voltage.

l have a very early start on Saturday (4 am) so I will need to power down everything for packing on Friday night

The server will probably go down from about 2 or 3 pm your time

Is there any advice regarding the settings for the email server.

allowing you, me or Robbie to access the router remotely should we need to check any settings. I intend connecting James Gilbert's old laptop to the internet though the Draytek router with a Radmin server set up

Cayman Islands so this should be straightforward to get working. I had James download and install the Radmin server last year so that I could work on his laptop while he was in the

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From: Permit [mailto:permit1@lambdaprime.org] Sent: Wednesday, 1 September 2010 7:04 PM

To: redfish@lambdaprime.org

Subject:

בימוו,

Have you considered the security issues involved in moving the laptops to Bermuda?

Especially the big documents image file.

I should hate for them to get tied up in Customs or have them seized for any reason.

For sure I would expect that you would not be connecting thru the USA

Bob

problematic – although if it were seized, they might have difficulty with it since it has a rather balky reboot process probably do yours as well. wipe them off my RADMIN laptop and then run EE on the entire laptop. That would solve some of the problem. PS: As a thought, I can easily transfer my files back to my computer here as they are relatively small. I would then PGP However the big document image file could not be done that way. The email server is also

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Message

Sent: From: Subject: King [king@lambdaprime.org] 8/18/2011 3:08:00 PM redfish@lambdaprime.org

Evatt:

separately using the file transfer method. records to Radmin. You told me you would help me do so in a manner which would not require that I send each file make sure there is nothing here to give any of Point's details. However, I need to transfer my confidential computer if his business is dissected by her attorney, Point would be an initial target. I told him I would review my paper records to Bob called concerned about the Robert Smith situation and what effect a nasty divorce might have on us. We agreed that

Please get back to me as to how I might transfer those files

be back Tuesday evening. For your information, we will be flying to Houston tomorrow (Friday) for my physical and Cameron's third birthday. We will

Don

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Message

From: Sent: Subject: Permit [permit@proventusconstans.com] 11/21/2013 9:50:57 PM redfish@proventusconstans.com

Evatt,

Robert just sent me what was supposed to be the deposition transcript.

However as I can tell from the email trail, it is the legal secretary that is screwing it up. She has the .pdf file named as the deposition – which it is not.

She sent Robert the trust document instead – which I really did not want to see. He just forwarded what she sent him on to me.

Please see if you can get the transcript.

Bob

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To: Bob Brockman

From: Evatt Tamine

Date: June 4th, 2017

Subject: 2016 Performance Evaluation

done all I did in 2016, which brought together so many skills. having an inflated ego, I would say that there are very few people who could have over me, all for the sake of protecting the AEBCT. At the risk of being accused of any doubt that I can work under pressure with the added threat of detention hanging I would say that without hesitation, 2016 has been my best year. I established beyond

position. I believe 2016 was probably the most difficult and challenging year since I took up this (Robert Smith's situation, for example). I gave up a great deal of family time to ensure was very successful in addressing those issues, though some remain outstanding that these issues were dealt with. A number of issues came up, which required special handling. I believe I

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Vhat went well?

for an extremely busy final two months to an already very busy year establishing all necessary entities and all documentation to buy the boat. boat out to market. convincing him that it would be better to come to us as a buyer and not put the Albula. This involved establishing a relationship with Bill Schleicher and The positive success for the year was my role in securing the purchase of the Arranging the lawyers for the purchase as well as

12 the financial systems to be implemented. complete the acquisition. with Cayman lawyers on establishing Fisheries Research Foundation Ltd to Thomson, who will manage the boat for years to come. I worked with him on During the acquisition of the Albula, I also built on the relationship with Graham Under severe time pressure, I worked

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- 3 and we'd have established a memoriam for Don rather than a gift in his lifetime. month. But for my efforts, this is something that could have lingered for years with Melissa passing shortly afterwards. This work also greatly pleased Melissa and made it less difficult to handle Don's was alive and joining him in a surprise lunch, we gave Don a real joy in his final Don by establishing the chair in accounting in his name. In doing this while Don when it starts with Don's death. I suggested and then arranged that we honor The sudden death of Don was a sad time. It is hard to speak of what went well, It also made what followed easier when dealing
- 4 drives, disks or documents that Don had kept. As you know, I even cut short the generally following a call from Melissa telling me that she had found more there and three flights back and included always driving from Memphis to discovered trip to Argentina to get back to Oxford to destroy more drives that had been Oxford and back. The trips were made when needed and without hesitation, to Oxford. Most were at short notice and always involved at least three flights In addition to the surprise lunch for the gift to Ole Miss, I made a further six trips
- 5 that we could rest easily that any attempt to search Don's home would humanly possible to clean up what Don had left behind. Those efforts meant By my extraordinary efforts, hugely impacting my family life, I did all that was

6 should she ever be visited by regulators. of her life, as she looks on me as a second son. She will not forget that loyalty mess she was left with. These efforts have secured Melissa's loyalty for the rest onwards where I did not spend time with Melissa helping her with the personal confronted following Don's death. There wasn't a trip from Don's death All of the foregoing was done while helping Melissa with the issues she

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- .7 impact on my family life. met with Robert's lawyers in Bermuda and several times in the United States, as last two people, I worked through their files and identified areas of concern. I Smith situation. Further, I was doing all I could to also protect Robert at the I was also engaged in doing all I could to protect the AEBCT over the Robert Once again, all this work was done without hesitation and without regard to the well as meeting Miller & Chevalier lawyers in both Washington and Houston we could talk freely), meeting Carlos Kepke and Sherri Caplan. In relation to the same time. I have spent a great deal of time on the road meeting with Robert (so
- 00 helped Stuart out of a position he found very difficult and worrying. by his position, his intelligence or reputation. I protected the Trust's gift and Paul Klotman over the use of the remaining funds at Baylor. I was not overawed example to others) that the Trust expects the terms of any gift to be honoured was clean and efficient and delivered a clear message to Dr Klotman (and an Houston (again without any hesitation or regard to my family) and confronted Early in the year, after receiving a complaint from Stuart Yudofsky, I travelled to The work
- 9 letting the university take control of the awards. I did this in a way that has led ground upon which we could push our approach to the scholarships without various schools. travelled to College Station on several occasions to meet with the deans of the Very significant time and effort was spent developing the Brockman Scholars. I have spoken with the president of Texas A & M and found

easier for the University to accept our requirements. Texas A & M to treat us as partners for a common goal. My efforts have made it

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- 10. relationship I have with Stuart is a very strong one. its first grants. allowed the Scientific Advisory Board to hold its first meeting and recommend Similarly, my efforts in working with Stuart Yudofsky and establish the Brockman Medical Research Foundation have proved successful. That work Systems have been developed that will hold for the future.
- involvement without suggesting that you control the giving. "Brockman Family Member" always sitting on the boards. That allows your the documentation to the extent I could. I also came up with the notion of a In relation to the medical research and scholars foundations, I have completed
- 12. external review by a regulator. approached this work means that we can tell a strong story in the event of an independence of the AEBCT and the Foundations. Indeed, the way I have The work on the Foundations was done in a way that preserves the
- 13. I undertook a lot of work in employing staff and dealt with people who did not years to come offices and telephone and network systems that will hold us in order for many Duncan on board, who appears to be working quite well. We have established quite work out (Bruce Lim, for example) without any complications. I brought
- 14. and the Foundations as genuine charities of substance. The rewards of this work development of our website. I have identified to the software to use for the foundations as well as the will become more apparent in the event of a review by an external regulator All this work goes towards establishing the AEBCT

15. which have been highly helpful in producing better accounts. The audits for proposed, and implemented, a number of changes to the method of accounting accounts and produce informative and accurate financial reports. In fact, I on a successful 2015 is that I have been able to successfully set up far more logical reporting and can efficiently produce reports. An area where I have further built complete them. Point are now completed in a more timely fashion after pressuring PWC to particularly for Point Investments Ltd. I am now very confident in the financial This year I successfully worked through improving financial reporting

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- 16. nothing to the lawyers but the story we wanted to convey, i.e. that the various register a number of companies for FATCA, but managed in a way that disclosed I have continued working extensively with lawyers in the United States to ensure entities are all exclusively engaged in charitable activities. that we are fully compliant with FATCA. This was an extensive task that saw us
- 17. version of events. which is before the banks - even for the older entities. I have given them our reviews with most of our Banks. This allowed me to re-establish the information As part of the FATCA process, I continue to work through comprehensive
- 18. other than I am the decision maker. Obviously Bob knows the truth, but I have I have managed to convey to Bob Yekovich your wishes without saying anything made it easy for him (and David Leebron) to maintain the position University politics. I believe my efforts are helping to keep this project on track. House project. I have been very supportive of Bob while he struggles with I have spent significant time with Bob Yekovich on the Rice University Opera

19. return (though a full return remains highly unlikely). It might sound an significant investment of doubtful return now has a prospect of a good States, which is helpful in making decisions on strategies going forward. have developed a good knowledge of the hospital industry in the United say in the decisions being taken including any monetization strategies. be in this position but for my involvement excessive boast, but I do not believe that we (or any other investors) would the board of directors of the controlling company, ensuring that we have a In relation to Founding Partners and Promise Healthcare, I continue to sit on A

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- 20. improved the accounting for Cabot and Edge. I continue to become more confident in financial reporting and have also
- 21. joining the various bank calls, which has vastly improved my knowledge on the outside fees). I have good relationships with debt brokers at Deutsche Bank and investments all the way through the assignment process (without incurring any sort of matters seen as important by those lending to businesses competition, but opportunities are still regularly offered to me. I have been Jefferies. Debt opportunities are harder to come by now with a great deal of opportunities have reduced because of market conditions. I have managed these The strategy of investing into debt has been successful this year, though debt
- 22. I believe that I am also innovative in devising new reports and improving in a position to fully understand where we are any particular topic. Examples of not been able to communicate fully, these reports are still produced in a timely I continue with the production of reports on a number of topics. While we have existing reports Transaction Report, the various Debt Reports, the Fees and Expenses Report etc. these reports are the Cash Report, the Vista Transaction Report, the Significant fashion (where the information is available) and are designed to quickly put you

23. is often subject to enhanced due diligence. I manage this process myself interests while at the same time being responsive to the needs of Vista in I continue to enjoy a very good relationship with Robert Smith and his prepared to disclose is released which is a lot more effective and ensures that only the information we are area is because Point owns more than 10% of two of the funds and as such carrying out their various transactions. Our need to be involved in this team at Vista. I believe that I am very strong in representing Point's

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- 24. you, of course). adequately address any problem that arises (with input and guidance from maintenance and repairs much easier. I feel very confident that I can trouble. I have maintained my end of our computer systems without too much Being able to work remotely and carry out changes makes
- 25. manage to spend more than 3-4 days at home before I had to travel again. been particularly horrendous. There were many periods where I did not that I did not feel like I was neglecting the family. The travel this year has hours, which I do without hesitation. It helped that I work from home so time necessary to get the work done. A key part in achieving the results I have was my willingness to give all the This often meant working very long
- 26. the AEBCT and the other trusts This year has seen me further establish my position as the figure head of
- 27. situations, e.g. with the Aspen Valley Land Trust and Bart Chandler. relationship with Carl Linnecke. At times Carl has found himself in tricky I have maintained in this last year a very strong and close working think he appreciates the support he has got from me and that has filtered down to David Finholm and the others

28. the knowledge of our affairs. use them, the reduction in the work they do for us also means that we control The reduction in the number of outside service providers or, where we still

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- 29. more work for me, we have better control and less fees. went into creating the structures as they are today. something that I am doing well, but rather the benefit of all the work that that the trust industry is filled with shady characters. This is not so much trust assets being sold without an accounting for the proceeds. The fact is people without the integrity of Gordon Howard. I have seen examples of companies in Bermuda. Unlike Grosvenor, these are trust companies run by fraud etc. Over the past year I have seen the operation of several trust mercy of service providers is that we are less likely to suffer loss through An important aspect to having control of our destiny and not being at the While it means a lot
- 30. in the database and saved there with signed copies. This is a very signatures. I no longer have to wait for documents to be signed. information. I manage to turn documents around in minutes using digital streamlined process now. process also fits more neatly into our database as the documents are created have to go out to anybody to have documents signed. We control the As I reported last year, holding the key directorships that I now do, I do not
- 31. I continue to document the movement of assets within the group, creating a proper commercial basis for all asset movements with the paper trail. This is also supported by the Significant Transactions Report
- 32. I have maintained very good working relationships with all key people. I stay in contact regularly with Don and Cris Ruffell Smith.

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- describing the computer set up in Bermuda. Maintaining the document database. I have built a very good document
- 34. problems Continuing the control of all companies and trusts with no compliance
- 35. been trying to make sure that I eat very well and get in some exercise girls is extremely strong and we enjoy each other's company. Sophie has hard to maintain a happy family life. The relationship with Sophie and the On a personal note, despite many absences though the year, I have worked

Things that need improvement:

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proves difficult. alcohol, however making time to get on the treadmill (which is here in the house) Sophie has me eating very well. I no longer drink sodas and have very little I must exercise more. This is something that I need to be concerned about.

Conclusion:

carried one great burden after another and dealt with them in a way that protects the have been huge and have signaled this as my most successful year by far.. I have This has been the hardest, most challenging year since I began in this role. My efforts AEBCT.

I have done all this while being stopped on a regular basis when travelling into the I cannot now return for an unknown period.

Sent: From: 9/6/2018 7:19:54 PM Bob Brockman Dr. Seth Lerner Dorothy Brockman'

I have been having trouble with a persistent UTI since at least mid July.

I take Levaquin (one 750mg per day) which seems to work right away and clears things up.

This last time around, I did this for 15 straight days

Yet after doing this - I stopped for 5 days. Then the symptoms started coming back.

Last Friday, I went to Dr. Scott Lisse, my GP

He requested a specimen – which looked absolutely horrible when I gave

The abnormal results from the Friday specimen were:

Ketones Nitrite Blood Protein Leucocyte Esterase positive 3+ trace

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WBC too numerous to count

All the rest were in the normal range

The culture also discovered that Levaquin is not supposed to work on the bug, but Doxycycline will

temporarily reduced my symptoms apparently completely – even though the culture said it shouldn't have worked Day for a one week fishing trip, I went back on Levaquin last Friday night – stopping again today. The Levaquin has Since the culture was not going to be available, the specimen looked horrible – and - I was leaving for Alaska on Labor

All of this may have some rational explanation, but seems to be somewhat bizarre at this point

Dr. Lisse is concerned that there may be something seriously amiss inside my bladder.

I will be back from Alaska this coming Tuesday.

am over due for "bladder washings" according to my records

If at all possible, can you work me in for a cystoscopy on Tuesday or any day later in the week?

I would be much obliged

Bob Brockman

Cc Dorothy Brockman

Case diale-gr 200000 Document 1 3 curiled on 21/04/21 in TXSD Page 224 of 771 05/11/2020 Grand Jury Subpoena Issued to Universal Computer Systems Holding Inc. Privilege Log of Robert T. Brockman (Withheld Documents)

Log No.	Sent Date	То	From	Copyee	Description	Privilege Reason (AC = Attorney-Client Privilege WP = Work Product Privilege CI = Common Interest MP = Martial Privilege)
277	8/21/2018		Bob Brockman [bob_brockman@reyrey.com]			
278	8/23/2018		Bob Brockman [bob_brockman@reyrey.com]			
279	8/23/2018		Bob Brockman [bob_brockman@reyrey.com]			
280	8/23/2018		Bob Brockman [bob brockman@reyrey.com]			
281	8/24/2018		Bob Brockman [bob brockman@reyrey.com]			
282	8/27/2018		Bob Brockman [bob_brockman@reyrey.com]			
283	8/29/2018	'Al Deaton'	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communication regarding DOJ criminal investigation, and reflecting a common legal interest	AC / WP / CI
284	8/31/2018		Bob Brockman [bob brockman@reyrey.com]			
285	9/3/2018	Peter Romatowski (pjromatowski@jonesday.com) [pjromatowski@jonesday.com]	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communication regarding DOJ criminal investigation	AC
286	9/5/2018	[Bob Brockman [bob brockman@reyrey.com]			
287	9/6/2018	'Romatowski, Peter J.' [pjromatowski@JonesDay.com]	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communication regarding DOJ criminal investigation and reflecting a common legal interest	AC / WP / CI
288	9/6/2018	Peter Romatowski (pjromatowski@jonesday.com) [pjromatowski@jonesday.com]	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communication regarding DOJ criminal investigation, and reflecting a common legal interest	AC / WP / CI
289	9/6/2018	Peter Romatowski (pjromatowski@jonesday.com) [pjromatowski@jonesday.com]	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communication regarding DOJ criminal investigation	AC
290	9/6/2018		Bob Brockman [bob_brockman@reyrey.com]			-
291	9/8/2018		Bob Brockman [bob brockman@reyrey.com]			
292	9/8/2018	'Cherry, Scott'	Bob Brockman [bob_brockman@reyrey.com]		Confidential attorney-client communications regarding DOJ criminal investigation, and reflecting a common legal interest.	AC / WP / CI

From: Bob Brockman 'Don Passmore'

Sent: ₫ 9/25/2018 1:34:26 AM

Subject: RE: Subpoena

Don,

Something is causing the data stream to get snarshed.

7Please resend.

25 Bob

© From: Don Passmore Sent: Monday, September 24, 2018 9:42 AM DTo: 'Bob Brockman' Subject: Subpoena

EBob

[2] have uploaded a copy of the Subpoena to your client portal account on our website www.houston-cpa.com.

0 1/Please call if you have any problems accessing your portal

o Thanks

ed Don

Don L. Passmore, CPA

ကိုPassmore & Associates, LLC

1713-935-en713-935-En713-935-CCONFIDENTIALITY STATEMENT:
On This electronic message transmission contains information from Passmore & Associates, LLC and is confidential or

Sany use, disclosure, copying, distribution or any other action based on the contents of this email and any attachments is Sstrictly prohibited. If you received this electronic transmission in error, this message and any attachments should be deleted Cimmediately and please notify us by telephone at 713-935-0300. privileged. The information is intended only for the use of the person(s) named above. If you are not the intended recipient,

်းFrom: Don Passmore 🏽

Sent: Monday, September 24, 2018 9:46 AM

CC: 'Keneally, Kathy'

Subject: Consent for Disclosure

Вор

You may have missed my email below.

call if you have any questions Please print, sign and return the original or signed copies of the attached Consent for Disclosure forms. Please Sorry but I was advised that you need to sign a written consent before I can discuss your tax matters with Kathy.

Thanks

Don

Passmore & Associates, LLC Don L. Passmore, CPA

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any use, disclosure, copying, distribution or any other action based on the contents of this email and any attachments is immediately and please notify us by telephone at 713-935-0300 privileged. This electronic message transmission contains information from Passmore & Associates, LLC and is confidential or strictly prohibited. If you received this electronic transmission in error, this message and any attachments should be deleted The information is intended only for the use of the person(s) named above. If you are not the intended recipient,

Sent: Wednesday, September 19, **To:** 'Bob Brockman' From: Don Passmore 2018 6:39 PM

Subject: Consent for Disclosure

Bob

ecall if you have any questions at hanks
PDon $^{
m NP}$ lease print, sign and return the original or signed copies of the attached Consent for Disclosure forms. Please

X X TDon L. Passmore, CPA

⊆Passmore 713-935-& Associates, LLC

თimmediately and please notify us by telephone at 713-935-0300 Exprivileged. The information is intended only for the use of the person(s) named above. If you are not the intended recipe any use, disclosure, copying, distribution or any other action based on the contents of this email and any attachments is Estrictly prohibited. If you received this electronic transmission in error, this message and any attachments should be deleted. This electronic message transmission contains information from Passmore & Associates, LLC and is confidential or The information is intended only for the use of the person(s) named above. If you are not the intended recipient, If you received this electronic transmission in error, this message and any attachments should be deleted

EFrom: Bob Brockman

Sent: Wednesday, September 19, 2018 5:32 PM

CTo: 'Keneally, Kathy'; 'Don Passmore'

OCc: 'Romatowski, Peter J.'

Subject: RE: Confidential re: Bob Brockman

-cr-00009

These attorneys represent me in this matter. I confirm that I consent to these

Case Bob

Sent: Wednesday, Sentember 19 2018 1-38 PM Subject: Confidential re: Bob Brockman Cc: bob_brockman To: Don Passmore From: Keneally, Kathyl Romatowski, Peter J.

Mr. Passmore

My partner, Pete Romatowski (copied) and I are counsel to Bob Brockman. We would like to discuss certain of his tax matters with you. I am copying Bob on this email so that he can confirm that he consents to these

Bob: Please confirm your consent by "reply to all." Thank you.

Best regards, Kathy Kathryn Keneally Partner

ecopying it and notify sender by reply e-mail, so that our records can be corrected.***

D Nattorney-client or other privilege. If you received this e-mail in error, please delete it from your system without ***This e-mail (including any attachments) may contain information that is private, confidential, or protected by

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CHARITABLE CONTRIBUTIONS April 7th, 2014

2004 06/29/2004 06/29/2004 06/29/2004 2006	PALS Agape House The Bermuda Diabetic Association	AMOUNT \$20,000.00 \$20,000.00 \$20,000.00
2006 07/31/2006 12/31/2006	St John's Trust Company Scholarships Bermuda International Film Fesitival	
2007 06/30/2007 12/31/2007	St John's Trust Company Scholarships Bermuda International Film Fesitival	
2008 03/31/2008	St John's Trust Company Scholarships	
01/14/2009 06/10/2009 06/30/2009 09/30/2009 11/23/2009 12/31/2009 12/31/2009	Rice University - Brockman Hall for Physics Rice University - Brockman Hall for Physics St John's Trust Company Scholarships Rice University - Brockman Hall for Physics WITSA IT Conference Bermuda Society of the Arts	\$5,000,000.00 \$5,000,000.00 \$64,803.11 \$5,000,000.00 \$5,000.00
2010 03/16/2010 04/14/2010 05/31/2010 09/30/2010 09/30/2010 12/31/2010 12/31/2010	PALS Peter Mitchell Rice University - Brockman Hall for Physics Bermuda Documentary Film Fesitival St John's Trust Company Scholarships Bermuda Society of the Arts Rotary Club Student Exchange Programme Bermuda Society of Prevention of Cruelty to Animals	\$5,000,000.00 \$5,000,000.00 \$5,000.00 \$71,518.00 \$5,000.00 \$16,000.00 \$1,000.00

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\$1,000,000.00 \$5,000,000.00 \$10,000.00	University of Texas Health Center Baylor College of Medicine Rotary Club Student Exchange Programme	01/22/2014 04/07/2014 04/24/2014
		2014
\$302,149.86	Centre College - Legal Fees (treated by Centre as a donation)	10/26/2013
\$10,000.00	Salvation Army - Bermuda	10/12/2013
\$12,000.00	Rotary Club Student Exchange Programme	10/10/2013
\$4,000,000.00	Centre College	08/08/2013
\$500,000.00	Rice University - Opera Theater - Pre-design	07/01/2013
\$2,000,000.00	Centre College	05/05/2013
\$1,000,000.00	University of Texas Health Center	05/05/2013
\$9,000.00	Rotary Club Student Exchange Programme	05/01/2013
\$5,000,000.00	Baylor College of Medicine	04/05/2013
\$10,000.00	Bermuda Documentary Film Fesitival	03/13/2013
\$4,000.00	St John's Trust Company Scholarships	03/03/2013
		2013
\$3,000,000.00	Centre College	09/26/2012
\$58,000.00	St John's Trust Company Scholarships	09/12/2012
\$18,500.00	Rotary Club Student Exchange Programme	09/09/2012
\$5,000.00	Bermuda Society of the Arts	07/07/2012
\$3,000,000.00	Centre College	07/02/2012
\$5,000,000.00	Baylor College of Medicine	04/12/2012
\$3,000,000.00	Centre College	03/30/2012
\$10,000.00	Bermuda Documentary Film Fesitival	01/31/2012
\$1,000,000.00	University of Texas Health Center	01/16/2012
\$3,000,000.00	Centre College	01/05/2012
		2012
\$9,500.00	Rotary Club Student Exchange Programme	12/31/2011
\$5,000.00	Bermuda Society of Arts	12/31/2011
\$3,000,000.00	Centre	10/06/2011
\$67,357.79	St John's Trust Company Scholarships	09/30/2011
\$5,000.00	Bermuda Documentary Film Fesitival	09/30/2011
\$10,000,000.00	Baylor College of Medicine	07/01/2011
\$4,500,000.00	Centre College	06/24/2011
\$2,500,000.00	University of Texas PET Project	01/17/2011

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04/26/2017 04/27/2017 To date 05/16/2017	2017	02/17/2016 03/28/2016 09/17/2016 10/05/2016 10/06/2016 Annual	2016	04/25/2014 10/13/2014 10/13/2014 2015 2015 01/09/2015 02/15/2015 03/10/2015 04/20/2015 04/21/2015 08/31/2015 09/27/2015 Annual
Baylor College of Medicine - O'Malley and Dacso Rotary Club Student Exchange Programme St John's Trust Company Scholarships Rice University - Opera Theater		Rotary Club Student Exchange Programme Rice University - Opera Theater - Design Rotary Club Student Exchange Programme Jefferson Scholars Foundation - Chair in Colonial History Cure FA Foundation - Mike Henry St John's Trust Company Scholarships		Rice University - Opera Theater - Pre-design Rotary Club Student Exchange Programme University of Texas at Austin - Musical Lives Program Rice University - Opera Theater - Pre-design Rotary Club Student Exchange Programme Rotary Club Student Exchange Programme Bermuda Documentary Film Fesitival Johns Hopkins Peter Poole - Sable Trust BVI - Donation in memory of deceased son Rotary Club Student Exchange Programme St John's Trust Company Scholarships
\$1,247,548.75 \$9,000.00 \$25,000.00 \$10,000,000.00		\$12,000.00 \$3,200,000.00 \$11,000.00 \$6,000,000.00 \$2,000,000.00 \$116,021.58		\$1,200,000.00 \$10,000.00 \$100,000.00 \$2,400,000.00 \$6,000.00 \$4,000.00 \$10,000.00 \$1,000,000.00 \$100,000.00 \$13,500.00 \$91,136.90

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Message

From: Bob Brockman
Sent: 12/16/2018 8:47:06 PM
To: 'Moss, Craig'

Craig,

Please make a \$1M charitable contribution to:

Baylor College of Medicine
Attention Seth P. Lerner MD F.A.C.S.
Houston, TX 77030

Send to me for signature and mailing.

Bob

ST. JOHN'S TRUST COMPANY (PVT) LIMITED

SUITE 225, 12 CHURCH STREET
HAMILTON HM11
BEBMITA

Tel: +1 (441) 295 0985

Fax:

+1 (441) 295 0986

Paul E. Klotman, M.D.
President

President
Baylor College of Medicine
Office of the President
Stuart C. Yudofsky, M.D.

D.C. and Irene Ellwood Professor and Chairman
Department of Psychiatry and Behavioral Sciences
One Baylor Plaza, MS 350
Houston Tayas 77030

Houston Texas 77030
United States of America

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June 5th, 2011

Dear Drs. Klotman and Yudofsky,

Re: A. Eugene Brockman Charitable Trust ("the Trust")

detailed material which I received in Bermuda soon after. I refer to my meeting with Dr. Yudofsky in Houston on Friday May 13th, 2011 and the

vision he holds for the proposed Psychiatric Institute at the Baylor College of Medicine. extraordinary intellect coupled with a rare and genuine compassion has formed the It was such a great privilege and pleasure to meet Dr. Yudofsky. Dr. Yudofsky's

research and education. Mr. Brockman passed away in 1986; however his vision was applied to worthy charitable causes, particularly in the area of medicine, medical the purpose of raising and maintaining a sufficient fund of assets, which could be Company (PVT) Ltd. The Trust was established by A. Eugene Brockman in 1981 with By way of background, I am a director of the Trustee to the Trust, St John's Trust

Paul E. Klotman, M.D. Stuart C. Yudofsky, M.D. June 5th, 2011

Mr. Howard for over ten years. I have become inoculated with the same vision. shared, and continued, by my predecessor Mr. Gordon Howard (who passec away last Trust has actively pursued these philanthropic goals since it was established While I never met Mr. Brockman, I did have the honour of working closely with

by the scope of Dr. Yudofsky's vision and his staggering intelligence, coming as they do meeting Dr. Yudofsky. I believe that, like me, Mr. Howard would also be mesmerized research. I feel sadness that Mr. Howard, in particular, did not have the opportunity of from such a humble and modest man. Both Mr. Brockman and Mr. Howard shared a strong desire to support medical

a corporation of which Robert T. Brockman is the Chairman, Reynolds and Reynolds, Baylor College of Medicine by way of a letter dated 16th June, 2005. Brockman's son, Robert T. Brockman. The Trust is ultimately the major shareholder of I should record that I first heard of Dr. Yudofsky while attending a meeting with Mr. That corporation, through Dealer Computer Systems, Inc., had made a pledge to

made by the Trust instead of the corporation. I have expressed my strong opinion to Robert T. Brockman that the pledge ought to be

the sum of the original pledge. Brockman has agreed with my view and acceded to my request that the Trust honour course, any institution with which he is associated). I am glad to say that Robert the Trust to find a more deserving recipient of support than. Dr. Yudofsky (and, of The reason for this is very straightforward: I do not think that it would be possible for

Psychiatry is essential to achieving his vision. The Trust therefore offers this gift achievements and utilize his extraordinary abilities. Particularly, I believe strongly that rare human being. I believe that the Trust should do all it can to honour his involvement is an absolutely essential pre-condition to this pledge. Dr. Yudofsky is a the foundation of the pledge the Trust hereby makes. Dr. Yudofsky's continuing I stress that it is the inspirational leadership and vision of Dr. Stuart Yudofsky which is Dr. Yudofsky's continued leadership as Chairman of the Menninger Department of contingent upon his remaining as Chairman.

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Paul E. Klotman, M.D. Stuart C. Yudofsky, M.D. June 5th, 2011

discontinuation of the remaining funds, should Dr. Yudofsky be removed from, or the Trust does reserve the right to reconsider the continuation of, and, if required, the It would be greatly appreciated if both Dr. Yudofsky and the Baylor College of relinquish, his position as Chairman. Medicine would confirm their commitment to the condition I set out above. Further,

contingencies set forth above and as follows: On behalf of the Trust, I am pleased to make the following pledge, subject to the

Pledge

The Trust hereby pledges \$25,000,000 (twenty-five million dollars) to Baylor College of Medicine for the exclusive purposes of and subject to each and every contingency listed below ("the Contingencies").

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12 of \$10,000,000 (ten million dollars) to be followed by three (3) annual allocations Upon written acceptance of the purpose and Contingencies of this pledge by the of \$5,000,000 (five million dollars) on April 15th for the three successive years the Contingencies, the Trust will transfer to Baylor College of Medicine the sum President of Baylor College of Medicine and completion of Items 1, 2, and 3 of following the year of the initial donation.

II. Purpose

- . The funds pledged are for the purposes of the following:
- (a) Stuart C. Yudofsky Presidential Chair in Neuropsychiatry \$5,000,000 (five million dollars) endowment support for the Beth K. and
- 3 Injury (new recruit to BCM, appointed after national search) Stuart C. Yudofsky Chair in the Neuropsychiatry of Traumatic Brain \$3,000,000 (three million dollars) endowment support for the Beth K. and

Paul E. Klotman, M.D. Stuart C. Yudofsky, M.D. June 5th, 2011

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- 0 \$2,000,000 (two million dollars) funding for recruitment expense infrastructure support, and supplies administrative support, research assistants, establishing laboratory,
- **a** appointed after national search) imaging; genetics; cellular and molecular biology) (new recruit to BCM, Stuart C. Yudofsky Chair in the Basic Science of Neuropsychiatry (e.g. \$3,000,000 (three million dollars) endowment support for the Beth K. and
- <u>e</u> infrastructure support, and supplies administrative support, research assistants, establishing laboratory, \$2,000,000 (two million dollars) funding for recruitment expense
- 3 search) neuropsychopharmacology) (new recruit to BCM, appointed after national brain stimulation; transcranial magnetic stimulation; Stuart C. Yudofsky Chair in Interventional Neuropsychiatry (e.g. deep \$3,000,000 (three million dollars) endowment support for the Beth K. and
- 8 infrastructure support, and supplies administrative support, research assistants, establishing laboratory, \$2,000,000 (two million dollars) funding for recruitment expense,
- Ξ search) \$3,000,000 (three million dollars) endowment support for the Beth K. and Traumatic Stress Syndrome (new recruit to BCM, appointed after national Stuart C. Yudofsky Chair in the Neuropsychiatry of Military Post
- administrative support, research assistants, establishing laboratory, \$2,000,000 (two million dollars) funding for recruitment expense infrastructure support, and supplies

Total amount of the pledge is \$25,000,000.

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Paul E. Klotman, M.D. Stuart C. Yudofsky, M.D. June 5th, 2011

12 The funds as they are donated and any accumulated endowment earnings purposes described above, under the direction of Professor and Chairman, Stuart Psychiatry and Behavioral Sciences of Baylor College of Medicine, for the generated therefrom are for the exclusive use of the Menninger Department of C. Yudofsky, M.D.

III. Contingencies

- Designating Stuart C. Yudofsky, M.D. as Principal Investigator for the entirety of this pledge, with exclusive "sign-off" authority for allocation of any and all funds expended.
- 2 Maintaining this donation in confidence except as specifically authorized in writing by the Trust.
- ω Medicine, and the Board of Trustees of Baylor College of Medicine President of Baylor College of Medicine, the Faculty Council of Baylor College of initially will be held by Stuart C. Yudofsky, M.D., subject to the approval of the The Beth K. and Stuart C. Yudofsky Presidential Chair in Neuropsychiatry

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÷. suitable replacement is recommended by Dr. Klotman or his successor, following include directing the use of the donated funds, temporarily, until such time as a assume the role and obligations of Principal Investigator, which obligations his obligation as Principal Investigator, which obligation includes directing the Should Stuart C. Yudofsky die, become incapacitated or voluntarily relinquish consultation with Beth Yudofsky, M.D., and approved by the Trust, which Medicine, or his successor, shall, in consultation with Beth Yudofsky, M.D., use of the donated funds, Paul Klotman, M.D., President of Baylor College of approval the Trust is free to withhold at its discretion.

not be obligated to make any further contribution whatsoever. shall be returned to Trust within 60 days of the date of written notice and the Trust shall right to cancel this pledge and any and all unexpended funds derived from this pledge writing that any of the contingencies listed above are not fulfilled, the Trust reserves the Should the Trust, within its sole discretion, determine at any time and designate in

Paul E. Klotman, M.D. Stuart C. Yudofsky, M.D. June 5th, 2011

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any nature may be released without the prior written approval of the Trustee This pledge and all details pertaining thereto are highly confidential. No information of

achieves the purpose for which it was established and the visions of Mr. Brockman and of the mentally ill and in advancing behavioral health. In making this pledge, the Trust proudly in support of this extraordinary mission to provide better, compassionate care and education. The settlor of the Trust and Mr. Howard would both have stood vision such as Dr. Yudofsky's, devoted as it is to the missions of patient care, research I wish only to add that the Trust has never before had an opportunity to support a Mr. Howard are fulfilled

one copy of this letter, which will constitute our Pledge Agreement. Would you then If the foregoing pledge and conditions thereto are acceptable, would you kindly execute return the executed copy to me at the address above

Yours sincerely,

ST. JOHN'S TRUST COMPANY (PVT) LIMITED

Evatt Tamine

Director

Pledge Agreement. This Pledge and the conditions thereto are acceptable to us and will constitute the

Paul E. Klotman, N

Stuart

Stuart C. Yudofsky

APPROVED AS TO FORM
Office of the General Course
Baylor College of Medicine
By RC (b) 144/11

6

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To: Bob Brockman

From: Evatt Tamine

Date: January 12, 2012

Subject: 2011 Performance Evaluation

few years. responsibility. This has been year of further change in terms of structures, with additional The year has also seen consolidation which has continued in the past

What went well?

in the debt markets has expanded. In addition to Deutsche Bank and in, and administer, a number of debt opportunities bringing good returns: Jefferies, I now have contacts at Credit Suisse Sunquest, Vision Solutions and Applied. The relationship with the players At a time when investment returns are down, we have managed to invest

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12 subsidiaries and accounts has been onerous. I am discharging my side of involvement of Point Investments, an unknown non-US investor, which arranging the letter of credit which saw the Ventyx escrow money released that quickly and successfully. due diligence requirements across more than 20 countries in setting up acquisition of the division out of Thomson Reuters, regulatory and HSBC's generally causes the compliance issues. more smoothly in areas such as due diligence. The fact is that most of responsive to their needs, which has made the closing process run a little My relationship with Robert and his team at Vista is going very well. I am Vista's investors are based in the U.S. and are major institutions. It is the Further, recently I had to get involved in For example, in the recent

process from Point's side. ABB was delaying the release, however we managed to complete the

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- S a couple of years ago is now complete. We have three new charitable trusts The key however is control of our destiny that no service provider can prejudice us with information from years ago. with new private trust companies. It is a clean start covering our tracks so outside regulator to connect you to activities. The restructuring that started and new trusts are in place, which would make it even more difficult for an under my control. The number of trusts and companies have been reduced I have undertaken and completed a major re-structuring of the entities
- 4. because he is concerned about what might be said to the Court about him. receiver, he seeks my opinion on a number of issues at this stage - possibly the difficult relationship all investors and Sun Capital have had with the dealings with the receiver have substantially increased. Notwithstanding be higher than in the past however this is unavoidable as our direct through the efforts I have made. This has meant that my profile has had to are still some hurdles, the fact is that all investors are looking at a return on the path to closing. The orders were made on 21 December. the Federal Court in the US had made orders which have now firmly set us best prospect of return. I have been the principal player in ensuring that Founding Partners nearer to a commercial resolution which will see the Once again, a great deal of time in the year was spent successfully bring While there
- 5 feel like I was neglecting the family. Frankly, I do not believe that it would did without hesitation. It helped that I work from home so that I did not to get the work done. This often meant working very long hours, which I other successes in 2011) was my willingness to give all the time necessary A key part in achieving the result I did with Founding Partners (and all

be possible to find someone who could or would commit the time that I do to this role.

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- 6 do not believe that anyone has any basis to suggest that I am merely contact with outside parties, such as Dr. Gould, John Roush and Stuart the AEBCT following the deaths of Gordon Howard and Trevor Lloyd. My This year has seen me further establish my position as the figure head of carrying out your instructions - what they might privately believe Yudofsky has been undertaken with the requisite degree of authority, i.e.
- 7 barrier against an attack from the IRS dinner when next I am in Houston. These activities would work as a strong a good rapport with Stuart Yudofsky and will invite he and his wife to them about visiting in the first half of this year. I immediately established John Roush and Richard Trollinger at Centre College and have spoken with contribution than Gordon had in the past. I have stayed in contact with In terms of the charitable activities, I continue to make a greater
- 00 also addressed this area in the next section on matters which did not go accounting. with me assuming the responsibilities of fund administration and This year saw the departure of Grosvenor Fund Administration Limited I have been largely successfully in doing this, though I have
- 9 issues that come up. greatly improved in this area and I feel quite comfortable in handling most I continue to maintain a number of accounts. I believe that my skills have

10. remove all documents, which he holds. I hope to do this in the first half of they do was made on the very best terms. access to any financial or other data. The substantial reduction in the work new private trust companies. That new role does not require that they have Poole and Sable Trust save for their role as the resident representative of the the knowledge of our affairs. I have also ended the relationship with Peter use them, the reduction in the work they do for us also means that we control The reduction in the number of outside service providers or, where we still Peter has invited me to the BVI to

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- information I manage to turn documents around in minutes using digital streamlined process now. in the database and saved there with signed copies. This is a very process also fits more neatly into our database as the documents are created signatures. have to go out to anybody to have documents signed. We control the As I reported last year, holding the key directorships that I now do, I do not I no longer have to wait for documents to be signed.
- 12. Mirabaud Private Bank in Geneva. managed to establish and/or maintain very good relationships with the In the ever more complicated world of KYC and due diligence, I have Bermuda Commercial Bank and Butterfield Bank in Bermuda and
- 13. I continue to document the movement of assets within the group, creating a proper commercial basis for all asset movements with the paper trail.
- 14. ownership; however I have also dealt with several of these enquiries for generated by Vista's investments where we are pressed on Point's beneficial successfully undertaken tricky due diligence exercises. On many occasions this year – and the number increases each year – I have Most enquiries are

Spanish Steps, Edge and Cabot. with minimal disclosure On each occasion I have walked us through

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- 15. have also added ideas to the reports which I have created. I am not content to quality and accuracy of the information reported. use the same old report, but am always looking for ways to improve the Point numbers, this is a vast improvement on where you were years ago. report within a week or so of month end. While I do not always have the My financial reporting is working very well now. I can turn around the cash
- 16. now standard operating practice. information. This is something you have not regularly received in the past. sometime in late January or February, subject to the availability of 2009. I hope to deliver the report for 2011 (with the previous six years) expenses. You will recall that I created the detailed report for the years 2005-Throughout the year I have regularly updated the report on fees and It is
- 17. will also be a regular monthly report, as will the debt investment reports Similarly, I have now completed the detail significant transactions report, which
- 18 I have maintained the Radmin computers and the email servers with very little for True Image backups. I am working as my own IT department have had some ideas which are beneficial, e.g. using two external hard drives disruption this year. I believe that I continue to improve my skills in the IT problems as I encountered I was usually able to fix myself. I believe that I On a personal level, my computer setup had very few problems and
- 19. I have maintained very good working relationships with all key people. I stay in contact regularly with Don and Cris Ruffell Smith

23.

Continuing in a very good relationship with Don and Melissa.

20. inventory. The documents will also be re-arranged to reflect the new coding Houston is the incorporation of the Bermuda documents into the Houston maintained for the Bermuda documents. A project for the next visit to original documents to Houston with a detailed inventory. An inventory is also I continue to continue to maintain a now settled system of getting

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Maintaining the document database.

21.

- 22. problems Continuing the control of all companies and trusts with no compliance
- 24. Per the 2011 list of goals set by you, I think most have been accomplished as per

the attached spreadsheet.

25. making sure that I eat very well and get in some exercise. extremely strong and we enjoy each other's company. Sophie has been been wonderful for me. The relationship with Sophie and the personal note the year has again been highly successful. girls is Family life has

Things that need improvement:

- shortfalls more fully with the auditors. So far as I can tell my numbers are intuitive. Further, this is exacerbated by the fact that Dan Voth had some odd improvement. correct, however I am approaching the audit ready to accept criticism and funds. I am coming onto the audit for Point shortly, so I hope then to discuss any ways of recording the cost of investments, i.e. buying "units" in the private equity the problem is that I have inherited an accounting software system which is not I am not quite happy with my financial reporting on Point Investments Part of
- 12 some projects to you because I focused on some of the less important projects This is something that I need to work on. I believe that I delayed on delivering I feel that this year also saw me make some poor choices on prioritizing work.

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3 hope that our streamlined processes will allow me more time to get out. I could use more exercise, as always. This has been a particularly busy year and I Coupled with the diet Sophie has me following, I hope that this is achievable this

Conclusion:

exposure to attack from regulators. will have contributed to a successful operation for years to come while reducing our changes which we went through in the past two or three years. I think that my efforts Again, this has been a very busy year in which I believe we solidified many of the

corporate administrator, investment manager, accountant, lawyer and IT support. Effectively, I believe that I now successfully act in all the following areas: trust and

I am proud of my efforts and I feel that 2011 has seen the full benefit of the work I have

I have achieved my goals with the minimum of outside input, which works well for us.

2011 GOALS AND RESPONSES

2011 GOALS

RESPONSES

1 Endeavor to deal with the Founding
Partners and Arboria issues as best you can.
This will include participating in any
mediation. However there is ongoing need
to be cautious about acquiring too high a
profile.

Done and ongoing. Founding Partners draws closer to resolution, though a return might take some years to realize.

2 Monitor the ongoing legislative process in the USA and other jurisdictions and facilitate whatever restructuring ends up being required.

Done and ongoing.

Done and ongoing.

3 Take over the accounting and reporting processes for Point. The goal to be achieved is:

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-maintain the same processes as are currently in effect

-complete your requirements for fund administration

-satisfactorily continue the current audit processes

4 With regards to accounting processes for other entities:

-establish use of an accounting software package that is a true double entry accounting system with proper journals, schedules, and general ledger with financial reports are produced
-where the financials have columns for the previous 5 years that show all amounts for all lines on the P&L and Balance sheet – as

I am trialing Peachtree as a backup system on Point. Will report further when I am well into the trial.

well as for the current 6 month period

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5 Conduct a semi-annual financial review of all entities face to face by the end of the first half of the year

Done and ongoing.

6 Reorganize the boxes of original documents such that historical files of discontinued entities are segregated into their own box(es)

Don, but need to be done again following the latest changes and taking into account the new coding system.

7 Request an asset ledger from Mountain Queen, Inc. that details all of the real estate, improvements, and furnishings. They should be keeping this for purposes of calculating depreciation – but they need to be asked.

This should have been completed by now. I will follow up with Carl Linnecke.

8 Complete the move to your new house with the following business issues addressed:
-I IPS units for all devices including DSI.

h Done. Generator is gas, however hooked to a large tank.

-UPS units for all devices including DSL modems, email server,
RADMIN laptops, your laptop & monitors, phone system, fax machine,

PDA chargers

- -diesel generator with plenty of reserve fuel capacity
- -fireproof data backup
- -ample desk space
- -good lighting for the work surfaces
- -proper chairs
- -air conditioning
- 9 Resolve the situation with Heather as to her D duties, hours, and location

Done.

19	18	17	16	15	14	13	12	11	10
Foster a relationship with RTB II	Start and maintain a forever-to-date ledger of charitable donations from the AEBCT	Pursue reasonable investment opportunities	Complete the reorganization described under PROJECTS – TRUSTEES & TRUST PROTECTORS and ENTITY STRUCTURE in the 12/28/2010 To-Do list	Create master document by entity of all bank accounts, signatories, contact persons, website logon's, account numbers, passwords, and whatever else that is needed to verify balances	Update the To-Do list at least monthly	Annually verify that there are letters of resignation from all trustees and that Bob has the originals	Arrange for audited financials for those entities that need to have audits	Continue to address the projects on the To- Do List.	Vacate the apartment to reduce lease expenses
Limited opportunity this year with Robbie's studies, however hoping that more opportunity will arise this	Done and ongoing.	Done and ongoing.	Done	Done. Need to send you an update following password changes.	Done and ongoing.	Done and ongoing.	Done and ongoing.	Done and ongoing.	Done.

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coming year.

eneral Goals for Every Year

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29	28	27	26	25	24	23	22	20
Run Evidence Eliminator at least weekly on your computer	Complete adding the documents and significant transactions for superseded entities to the respective databases on a piecemeal basis during the year	Operate as much as possible in a paperless manner – such that if someone were to come in your door unannounced everything would be in encrypted digital form	Continue to update the accounting reports to the document image database	Convert to keeping all email and financial records on an encrypted Micro SD chip carried in a different location in luggage when traveling abroad – or better yet just use RADMIN	Publish the Cash Report monthly	Continue to keep the entity/significant transaction database up to date constantly	Continue to keep the document image database up to date constantly	Continue to work to reduce the number of entities as this makes all processes simpler creating more time to focus on investment programs.
Done and ongoing.	Done and ongoing.	Done and ongoing.	Done and ongoing.	Micro SD cards on to be delivered early next week.	Done and ongoing.	Done and ongoing.	Done and ongoing.	Done and ongoing.

37	36	35	34	33	32	31	30
In the event of non-performance of a service provider or investment, the policy will always be to withdraw quietly – unless a high level policy decision to do otherwise is	Regardless of the level of non-performance of a service provider, a cordial professional relationship should be maintained – unless a high level policy decision to do otherwise is made	To the extent possible, no service provider should become crucial – always be thinking about portability and alternate providers should the need arise	Maintain relationships with the remaining service providers – bearing in mind that not a lot should be expected from them – never take for granted that they are doing what they should be doing which will require constant monitoring of their activity	Maintain all working entities in good standing so that their legal existence can not be questioned	Continue basic education in accounting, bookkeeping, auditing, and financial controls	Keep Don's computer activity operating on RADMIN as much as possible	Keep your computer system running perfectly – get whatever you need for maximum productivity and backup
Noted.	Noted.	Done and ongoing.	Done and ongoing.	Done and ongoing.	Done and ongoing. Most improvement is coming from hands-on experience. The Point audit will be an education in itself.	Done and ongoing.	Done and ongoing.

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44	43	42	41	40	39	38
Provide an annual report of your expenses for review – organized by month– in	Although you have several personal friends in Houston that I am sure you want to maintain, please restrict your contact with the USA generally such that except for these few – you tend to fade into the background	Plan your life for healthy, balanced, stable, long-term productivity	Other than your personal vacation travel, I recommend that you conserve the amount of travel that you do for business as your control of everything will be directly related to the amount of time you spend in front of your multi-monitor computer system at home.	Monitor your levels of daily effort so as to avoid burn-out. Engage in a regular fitness program with proper diet so as to stay in top physical condition.	Coordinate the charitable giving initiatives of the AEBCT	Continue the excellent work on the spreadsheet for expenses of each service provider such that detail entries by type of expense are kept so as to support the annual expenses for each service provider
Provided for 2010. Should be able to deliver the 2011 report before the start	Ongoing.	Noted.	Noted.	Done and ongoing.	Done and ongoing. 2011 report should be delivered in about two weeks.	Done and ongoing.

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purpose

sufficient detail to establish the business

of February.

DRAFT

Paul E. Klotman, MD
President
Baylor College of Medicine
Office of the President

Baylor College of Medicine Menninger Department of Psychiatry and Behavioral Sciences D.C. and Irene Ellwood Professor and Chairman Beth K. and Stuart C. Yudofsky Presidential Chair in Neuropsychiatry Stuart C. Yudofsky, MD

One Baylor Plaza, MS 350 Houston, Texas 77030 United States of America,

December 22, 2015

Dear Drs. Klotman and Yudofsky,

position as Chairman. Additionally, any new Principle Investigator of this gift can only occur following discussion with Dr. Beth Yudofsky, and The Trust retains its rights for approval or the use of our gift. Indeed, The Trust offered this gift contingent upon his remaining as as Chairman of the Menninger Department of Psychiatry was essential to achieving his vision for inspirational leadership and vision of Dr. Yudofsky and to honor his achievements and disapproval of any new PI and/or use of these funds thereafter until such PI is approved by The discontinuation of the remaining funds should Dr. Yudofsky be removed from, or relinquish, his Chairman. We also reserved the right to reconsider the continuation of, and, if required, the extraordinary abilities. It was the position of The Trust that Dr. Yudofsky's continued leadership letter of June 5, 2011, I am a director of The Trust that provided this gift in recognition of the Principal Investigator of the gift that established and continues to support the Beth K. and Stuart I am writing regarding the appointment of the replacement for Stuart C. Yudofsky, M.D., as Yudofsky Division of Neuropsychiatry (hereafter, the Division). As you will recall from my

named in their honor can only be held by an individual with such certification, identification and identify and effect a replacement who is an identified world-renown, certified neuropsychiatrist and happiness are our desire. At the same time, Dr. Yudofsky's retirement occasions a need to of Psychiatry or a Division of Cardiology in a Department of Medicine background--no different from the requirement of a Division Child Psychiatry in a Department to direct the use of the funds provided by The Trust for the development and operations of the Division. Drs. Stuart and Beth Yudofsky and the Trust concur that a Director of the Division We support Dr. Yudofsky's decision to direct his energies and time to his family, whose health

of our gift. The trust uniformly and irrevocably supports their recommendation. B. Arciniegas, M.D., as his successor to the role of PI of the Division and director of the entirety Beth Yudofsky, M.D. and with the consultation and approval of The Trust, hereby names David In his current role as Chairman and Director of the Division, Dr. Yudofsky, in consultation with

deferred to Dr. Arciniegas upon his arrival in the fall of 2012 the responsibility of developing the drafted the Division's mission, vision, and near-term strategic goals. Dr. Yudofsky, whose uniquely qualified to lead the development of the Division, Dr. Yudofsky approached Dr. agreement establishing the Beth K. and Stuart C. Yudofsky Division of Neuropsychiatry was vision of installing Dr. Arciniegas as Director and his successor PI of the Division. Division. His decision to do so was a carefully considered one and consistent with his long-term extensive duties as Department Chair have required his focused attention and leadership, In anticipation of Dr. Arciniegas' arrival to the Baylor College of Medicine, Dr. Arciniegas Medicine and to serve as the Division's Executive Director. recruited by Dr. Yudofsky into the Beth K. and Stuart C. Yudofsky Chair in Brain Injury with him this opportunity. Over the course of the following six months, Dr. Arciniegas was Arciniegas at the 2011 annual meeting of the American Neuropsychiatric Association to discuss extraordinary skills as a clinician, educator, researcher, and administrator. Recognizing him as established himself as one of the world's foremost neuropsychiatrists and developed neuropsychiatry. At the time The Trust pledged its support for the Division, Dr. Arciniegas had Colorado School of Medicine and rapid development as an international thought leader in Neurosciences, Dr. American Neuropsychiatric Association and the Journal of Neuropsychiatry and Clinical finalized. Having known Dr. Arciniegas for many years through their work together in the Dr. Yudofsky began recruiting Dr. Arciniegas to the Baylor College of Medicine while our Yudofsky observed Dr. Arciniegas' remarkable work at the University of

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undergraduate, graduate, and post-graduate neuropsychiatry curriculum he and his Division abroad. As evidenced by his recent presentation of this element of his work at the Tenth of mutual interest Hermann, and to partnering with The Menninger Clinic on several programs in neuropsychiatry Baylor Cliniic, the Michael E. DeBakey Veterans Affairs Medical Center, and TIRR Memorial compassionate patient care also led to his creating new clinical neuropsychiatry services at the faculty have created are already gaining international attention. Dr. Arciniegas commitment to International Congress of the International Neuropsychiatric Association in Israel, the for the Division that is unmatched by any other neuropsychiatry program in our country or Arciniegas' ability to inspire and motivate faculty enabled him to create an educational portfolio States and internationally. According to Dr. Yudofsky and in the estimation of the Trust, Dr. appointments are within the Division and who are among the top neuropsychiatrists in the United Dr. Yudofsky have recruited 21 faculty members into the Division, including 13 whose primary Division within the Baylor College of Medicine and across its affiliates. In three years, he and for the Division beyond its endowment-supported programs and created a robust academic recruit faculty into the Division's endowed chairs and related positions. He expanded his vision provided by The Trust in a manner that created the administrative infrastructure required to rapid and strategic growth. Dr. Arciniegas skillfully and systematically deployed the resources authored by Dr. Arciniegas, the three short years since his arrival are marked by the Division's As demonstrated amply in the remarkably thorough Program Description and Progress Report

architect of the federal case definition of Gulf War Illness, to serve as the Beth K. and Stuart C successfully recruited Lea Steele, Ph.D., an internationally-renowned neuroepidemiologist and is a co-investigator and Executive Committee member. Dr. Arciniegas and Dr. Yudofsky national research network, the Translational Research Center on TBI and Stress Related Dr. Arciniegas also has demonstrated the ability to successfully recruit world-class faculty into the Division. Shortly after his arrival to Houston, Dr. Arciniegas and Dr. Yudofsky recruitment in the coming month. remaining endowed Chair, focused on Interventional Neuropsychiatry, and expect to finalize that Dr. Arciniegas and Dr. Yudofsky are in final negotiations with an exceptional candidate for the Post Traumatic Stress Syndrome. She is expected to begin her work in the Division in May 2016 health, to serve as the Beth K. and Stuart C. Yudofsky Chair in the Neuropsychiatry of Mllitary highly-sought cognitive neuroscientist and expert in military neurotrauma and psychological earlier this month. Dr. Arciniegas also recruited Deborah Little, PhD, a nationally known and Disorders (TRACTS) program and a site for a multicenter clinical trial on which Dr. Arciniegas transitioned the brain injury research program into a network site for the Boston VA-based Medicine Program and to lead their brain injury research endeavors at the Michael E. DeBakey began recruiting Ricardo Jorge, M.D. to serve as a senior partner in the Division's Brain Injury Yudofsky Chair in Behavioral Neuroscience. Dr. Steele began her appointment in the Division Veterans Affairs Medical Center. Dr. Jorge began his work there in the fall of 2013 and rapidly

federal and private sources, representing more than \$30 million in extramural investment in the research programs in which the Division and its local and national partners are engaged. Living, and Rehabilitation Research. In combination with the faculty he has recruited, the funding for his brain injury research from the National Institute on Disability, Independent Since his arrival, Dr. Arciniegas has personally garnered more than \$5 million in extramural The research component of the Division has also thrived under Dr. Arciniegas's leadership Division's research portfolio has grown in three years to include 16 grants supported by both

the Journal of Neuropsychiatry and Clinical Neurosciences, and Chairman of the International the Executive Committee of the International Neuropsychiatric Association, the Interim Editor of the national and international neuropsychiatry and brain injury communities. He is Chair of the in the United States and an international center of excellence in neuropsychiatry. visible roles has led the Division to be recognized widely as a premier neuropsychiatry program Brain Injury Association. His contributions to the professional communities in these highly Training Committee of the American Neuropsychiatric Association, a longstanding member of Concurrent to his work at the Baylor College of Medicine, Dr. Arciniegas provides leadership in

would be possible for The Trust to find a more deserving recipient of support than Dr. to come. In the wake of Dr. Yudofsky's departure from the Division, the Trust concludes that it is a visionary, principled, and compassionate academician and administrator. It is clear to me and Arciniegas as the Division's Executive Director. As predicted by Dr. Yudofsky, Dr. Arciniegas talented academicians and his gifts as a mentor are exemplified by his appointment of Dr. development of the Division supported by The Trust. His acumen for identifying exceptionally Dr. Yudofsky's extraordinary intellect and genuine compassion formed the vision for the The Trust that Dr. Arciniegas will lead the Division and honor Dr. Yudofsky's legacy for years

On behalf of The Trust, we request:

pledge, with exclusive "sign-off" authority for allocation of any and all funds expended 1. David B. Arciniegas, M.D., be designated as Principal Investigator for the entirety of our

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- 2. Subject to the approval of the President of Baylor College of Medicine, the Faculty Council of Neuropsychiatry. Arciniegas be appointed the Beth K. and Stuart C. Yudofsky Presidential Chair in Baylor College of Medicine, and the Board of Trustees of Baylor College of Medicine, that Dr.
- suitable replacement cannot be identified prior to Dr. Arciniegas' voluntarily relinquishing his obligation as Principal Investigator, the terms of our original agreement shall remain in effect 3. Should Dr. Arciniegas voluntarily relinquish his obligation as Principal Investigator, which Investigator and develop a timely succession plan for transitioning the role and obligations of Baylor College of Medicine, or his successor, shall, in consultation with Stuart C. Yudofsky, obligation includes directing the use of the donated funds, Paul Klotman, M.D., President of Principal Investigator, whose obligations include directing the use of the donated funds. If a M.D., Beth K. Yudofsky, M.D., and David Arciniegas, M.D., identify a successor Principal
- 4. All other terms of our original agreement remain in effect but for the above requests

acceptable, would you kindly execute one copy of the attached letter and return the executed our pledge to Baylor College of Medicine was made. If the foregoing requests and conditions are requests, The Trust continues to achieve the purpose for which it was established and for which Division established by Dr. Yudofsky and his successor, Dr. Arciniegas. In making these copy to me at the address above. The Trust stands proudly in support of the extraordinary mission, vision, and goals for the

Yours Sincerely,

From:

To:

Subject:

RE:

Date:

Sunday, A

Case 3:20-cr-00371-WHA

Document 69-15

Filed 12/15/20

Page 1 of 1

e: Sunday, August 13, 2017 4:23:00 PM

Evatt,

I concur with all of these.

From: Redfish

Bob

From: Redfish [mailto:redfish@hannah.com]
Sent: Sunday, July 30, 2017 6:05 AM
To: 'Permit'
Subject:
Bob,

Here is a memorandum of issues to consider following BCB freezing accounts.

themselves and allege suspicions about the operation of the accounts. fear that BCB will try to justify their stupidity by reporting us to a regulator. One think I did not consider, but which Sophie raised with me after my account was frozen, is her They could try to cover

We need to get away from the bank as quickly as possible.

Evatt

MEMORANDUM

Case 3:20-cr-00371-WHA

Document 69-16

Filed 12/15/20

Page 1 of 5

From: Evatt Tamine

To: File

Date: July 29th, 2017

Subject: BCB's decision to freeze accounts

current operations The recent decision of BCB to freeze accounts has highlighted some shortcomings in

problems and solutions, I'll detail issues we'll encounter in achieving the solutions. This memo addresses the problems and provides possible solutions. After stating the

Tangarra and my personal accounts have all been frozen freeze all accounts where I am a signatory. AEBCT, Cabot, Edge and Regency as well as PROBLEM 1: Having all bank accounts held at the same bank has led BCB to

SOLUTION: Establish accounts at separate banks for each group

allege a belief that there is something suspicious about the accounts to the BMA. of this is real. If BCB tries to justify their decision to freeze accounts all they need to is could lead to a freezing of all accounts wherever held in Bermuda. risk of having everything in that jurisdiction frozen if a regulator takes action. The risk PROBLEM 2: Having all accounts and operations in a jurisdiction places us at That

and Regency in separate jurisdictions, e.g. keep Point in Switzerland and Singapore, but SOLUTION: Set up additional banking relationships for AEBCT, Cabot, Edge

to the BVI and the Isle of Man. There is a problem with Caribbean banks given I can't move Edge to Guernsey and Cayman Islands; Cabot to Jersey and Nevis; and Regency travel through the US to get there

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Document 69-16

Filed 12/15/20

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accounts as being connected to Don Jones and, in the case of Butterfield Bank, to RTB. PROBLEM 3: The legacy relationships at BCB and Butterfield Bank place all

places where we get to write our own history. Kill off all reference to RTB and Don SOLUTION: As we have done in Switzerland and Singapore, set up accounts in

elsewhere, we would be disclosing where other accounts are held, possibly alerting a action to free the money. If we are caught like this again, in accessing accounts regulator as to where they should seek to freeze money. most of my funds are held in BCB. Similarly, I could not retain a lawyer to bring an cannot pay my American Express bill, the builder's invoices and school fees because accounts are frozen, as BCB did, then we are restricted in accessing cash. Right now I PROBLEM 4: We lack a real fighting fund for legal fees and living costs.

and living expenses can trust, would be a prospect to hold funds in a trust and make a "loan" for legal fees but which we could control. Glenn Ferguson, a lawyer in Australia who I know and problem, but we need a hidden fund, which has nothing to do with either me or RTB, SOLUTION: The solutions above would go part of the way to addressing this

systems so that we can "flick the switch" and keep operating after a day or two. PROBLEM 5: We don't have an escape jurisdiction with back up computer

shell companies would be mirrors of existing companies, e.g. another St John's shell companies holding operating bank accounts and, if possible, residency rights. associated with St. John's. however that fell apart when the service provider wanted full financials for all entities SOLUTION: I made an attempt in setting up a mirror St John's in Singapore; We need to set up redundant systems in a few places with

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and we can turn on the system there which is in the name of Sophie's personal family trust. I can dismantle everything here the apartment (if there is space) in the UK. Nobody would connect me to that property, In relation to computer systems, we can set up a complete copy of the secure system at

to the Caribbean while I cannot travel through the US, which could be some years yet. presence. The reason I need to look at the Channel Islands is that I cannot readily travel and a small apartment. We could also look at setting up a company in Guernsey or Jersey with a residence right to anticipate that we'll be audited at some point. Even if Robert Smith clears up his problems, the target is well fixed on me and we need That would make getting bank accounts easier since we have a

have low key back up places for me to slip into with the non-Foundation work. As long as everyone pegs me as entirely engaged by the Foundations in Bermuda, we can cover We would keep the focus on Bermuda with the Foundations established and operating our tracks elsewhere They would be active, hopefully drawing the attention of any regulator, while we

about compliance requirements being rammed down their throats. limited, have weak people who have lost any sense of a robust reaction to the KYC PROBLEM 6: Jurisdictions like Bermuda, where the employee gene pool is very They don't care about business, only

should look to strong jurisdictions, including considering accounts in the UK, Malta, but we could be a lot safer. comply, but they have stronger people who can still deliver a service to clients. Canada, Australia, Hong Kong etc. We might be exposed to taxation on some returns, SOLUTION: Stronger jurisdictions such as Switzerland are doing all they can to

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existence with no social media, little contact with professional people etc have the sort of name that can be hidden, even though I try to maintain a very low key because of Robert Smith and the Albula, which also draws a lot of attention. I don't PROBLEM 7: The target on me is a lot larger than it was some time ago both

being married to a Bermudian. Regulators will come to Bermuda looking for me, while particularly be the case since the Foundations tie me so closely to Bermuda as does to avoid being locked into one place. It becomes harder to track me down. This would establishing a presence in additional places such as the Channel Islands, I might be able we build and maintain connections elsewhere. SOLUTION: I need to muddy the waters about where I am located. With

In addressing the issues above, there are a few things to consider:

- not taking silly actions such as BCB did in freezing the accounts We need strong jurisdictions where they will comply, but still be robust about
- The time differences are important so we can maintain efficient communications
- of detention is lifted, we should be careful about my traveling into the US Need to be somewhere we I don't have to travel through the US. Even if the fear

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readily understood and accepted by all people who work those places. and I wish to be nearer to them. That is not our plan, but it is something that is should be because my daughters will soon have to go to school outside Bermuda relationships. In the Channel Islands, Switzerland, Malta, Cyprus etc, this We must have a good cover story as to why I would like to establish new

possible). I could keep all I need at Stuart Yudofsky's office including a phone. Certainly, I would never again do it with a computer or telephone (if the later is

relationships on the back of a Bermuda passport. could take up to a year to process), I can establish many of these new Once I gain Bermuda status after October 21st, 2017 (though the application

To: Permit

"redfish@lambdaprime.org"

Sunday, June 12, 2011 2:31:00 PM

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Page 1 of 1

⊵vatt,

This summer I plan to do some more investigation on the management buyout / preferred stock bailout

As such I will need to be talking to some business/tax experts

you might more fully flesh out .: Please write me a letter as trustee and send it to me hard copy via FED-x along the following lines that

Dear Bob

Congratulations on passing your 70th birthday. I trust that proper celebrations occurred

Further formal congratulations are in order for the recent successful refinancing of the remaining debt from the acquisition of Reynolds and Reynolds. The interest savings of some \$30 million per year is

other reason than diversification, this is a subject of concern. ownership of the group of companies owned by Universal Computer Systems Holding, Inc. need to be made. These companies are the principal assets of the A. Eugene Brockman Charitable Trust. For no On a more serious note, as we have previously discussed, plans for transition of leadership and

some form of eventual management buyout with Ron Lamb as the leader would seem to make sense Obviously you have begun the process of leadership transition with the appointment of Ron Lamb as President. Hopefully his performance to date has met your expectations. Our conversations around Our conversations around

holdings in Universal Computer Systems Holding, Inc. I would like for you to devote further attention to manners in which the Trust might begin to liquidate its

I look forward to talking with you further on this subject as you have further information available

Evatt Tamine Director

Bob

From: To: Date:

Case 3:20-cr-00371-WHA

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<u>Permit</u> <u>"Redfish"</u> Saturday, August 1, 2015 9:56:00 PM

I think that it would be a good idea for you to send an open email to Stuart that you have been considering the formation of a medical research foundation somewhat along these lines. Al Deaton has been aware of this initiative.

He has suggested your name and indicates that you would be interested in being involved in a leadership position.

This is an exciting thought.

This project is in its early stages – and I look forward to discussing it further with you.

Page 1 of 1

Sent: From: Subject: Evatt Tamine (Tangarra) 8/13/2015 12:01:33 PM Stuart C. Yudofsky

Dear Stuart,

I hope that you are enjoying summer and that Houston is not too hot.

foundation, if established correctly from the start, would support worthy projects for generations to come. On behalf of the Trust, I am establishing a foundation that will support medical research. I hope that this new

I should be grateful for an opportunity to speak with you about joining the Board of Advisors for the new foundation.

difficult to find a better person to help establish and direct the foundation. Apart from the great enjoyment I would take in seeing you on a more regular basis in the future, I think it would be

If this is something that might interest you, please let me know when would be a good time for a call?

Kind regards

Evatt

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ORAL Highly AND VIDEOTAPED Confidential January DEPOSITION 16, Attorneys' 2019 OF ROBERT Eyes Only BROCKMAN

VOLUME

produced ORAL S D AND മ VIDEOTAPED witness аt DEPOSITION OF the instance 0 f ROBERT the BROCKMAN

PLAINTIFF(S), and duly sworn, Sew taken ut. the

above styled and numbered cause ЦO the 16th day Of.

January, 2019 from 9:30 a.m. t 0 2:56 p.m., via

 \Box elephone, before Shauna . Beach, RDR, CRR, CSR n T and

reported þу

Ф Ţ he law 0 f f i Ω S D 0 f Gibbs გა Bruns, LLP 11 00

Loui . Մ .ana, Sui \Box Œ И 300 Houston, Texas 77002, pursuant t 0

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dgworth@milberg.com	
19th Floor	ა ა
nsylvania Plaza	21
JOHN HUGHES Milberg Tadler Phillips Grossman, LLP	20
ROBERT WALLNER (appearing telephonically)	
ל	0 0 1 F
jlong@kellogghansen.com	17
mnemelka@kellogghansen.com	
Washington, D.C. 20036	16
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Exhibit 645 Email chain ending with email to 106 Ron Workman from Robert Schaefer dated 1/6/2015 CDK CID 00242098 - CDK_CID_00242099 Confidential Highly Confidential Exhibit 646 Email chain ending with email to 80b Brockman from Robert Schaefer dated January 11, 2015 REYMDL00565070 - REYMDL00565071 Highly Confidential - Attorneys' Eyes Only Exhibit 648 Email chain ending with email to Confidential Confidential Exhibit 648 Email chain ending with email to Confidential Confidential Exhibit 649 Email chain ending with email to Craig Moss from Dan Agan dated May 12, 2015 REYMDL00652128 - REYMDL00652133 Highly Confidential - Attorneys' Eyes Only Exhibit 649 Email chain ending with email to Tommy Barras from Bob Brockman dated August 22, 2015 REYMDL002044042 - REYMDL0044043 Highly Confidential - Attorneys' Eyes Only Barras dated July 7, 2017 REYMDL00226199 - REYMDL00226200.002 Highly Confidential - Attorneys' Eyes Only Moss dated August 25, 2017 REYMDL00720415 - REYMDL0070511 Highly Confidential - Attorneys' Eyes Only Sexhibit 651 Email to Bob Brockman from Craig Moss dated August 25, 2017 REYMDL00720415 - REYMDL0070511 Highly Confidential - Attorneys' Eyes Only Exhibit 652 Email to Bob Brockman from Craig Moss dated August 25, 2017 REYMDL00720415 - REYMDL00705511 Highly Confidential - Attorneys' Eyes Only Eyes Only	2 2 4	. ω		ა 	21	20	<u> </u>		1 8	17	F	ر ر	15 H	14	L 4)	12		 10	· ·	0	Φ		l	ത ഗ ————————————————————————————————————	l 1	4	ω		N	_ ⊢ 	_
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A. It's Robert Theron Brockman.	25
for the record.	24
questions today. Could you please state your full name	23
Nemelka. And it's my opportunity to ask you some	22
Q. Good morning, Mr. Brockman. My name is Mike	21
BY MR. NEMELKA:	20
EXAMINATION	19
having been first duly sworn, testified as follows:	18
ROBERT BROCKMAN,	17
please swear in the witness and we may proceed.	16
THE VIDEOGRAPHER: Will the court reporter	15
behalf of CDK Global.	14
MR. RYAN: Mark Ryan from Mayer Brown on	13
witness, Mr. Brockman.	12
for defendant the Reynolds and Reynolds Company and the	11
MR. COHEN: Michael Cohen, Sheppard Mullin,	10
for Reynolds and Reynolds.	9
MR. CHERRY: Scott Cherry, general counsel	œ
Bruns.	7
MR. WILKINSON: Brice Wilkinson, Gibbs &	Q
for the witness.	ហ
MS. GULLEY: Andi Gulley, Gibbs & Bruns,	4
plaintiffs.	ω
Phillips Grossman on behalf of dealership class	N
MR. HUGHES: John Hughes, Milberg Tadler	Н
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property there that you visit from time to time?	25
Q. (By Mr. Nemelka) Do you have is there	24
A. No.	23
MS. GULLEY: Objection; form.	22
Colorado?	21
Q. (By Mr. Nemelka) Do you own property in Aspen,	20
plant.	19
headquarters, and the other one is a forms manufacturing	18
Ohio. One is the Reynolds and Reynolds main	17
A. Reynolds and Reynolds owns two locations in	16
MS. GULLEY: Objection; form.	15
control over own property anywhere else?	14
Q. (By Mr. Nemelka) Does any entity that you have	13
A. No.	12
MS. GULLEY: Objection; form.	11
other states besides Texas?	10
Q. (By Mr. Nemelka) Do you own property in any	9
lives in. It's 1731 Sunset.	œ
A. My wife and I own a townhouse that our son	7
MS. GULLEY: Objection; form.	O
Q. Do you own property anywhere else?	И
A. 333 West Friar Tuck Lane, Houston 77024.	4
Q. And what is your address?	ω
A. Houston.	Ν
Q. And where do you live?	Ľ
Page 10	

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MS. GULLEY: ODJe	Z 4
(D)	2 Ω 4 ω
A. It was probably in between.	22
Q. Was it a full day or half day?	21
A. I'm sorry, I didn't keep track of the	20
Q. And how long each day did you meet?	19
A. Yesterday and the day before.	18
your deposition today?	17
Q. (By Mr. Nemelka) And when did you prepare	16
subject of of attorney-client communication	<u>1</u> 5
MS. GULLEY: Stop. Don't reveal	14
exhibits.	13
A. Yes. I talked to my attorneys and reviewed	12
today?	11
Q. Okay. Did you prepare for your deposi	10
A. No.	9
interest in Mountain Queen, Inc.?	œ
Q. (By Mr. Nemelka) Do you have any ownership	7
A. It's called Mountain Queen, Inc.	Q
MS. GULLEY: Objection; form.	Л
you lease it from?	4
Q. (By Mr. Nemelka) That you lease. And	ω
A. Yes. There's property that I lease.	N
MS. GULLEY: Objection; form.	\vdash
Page	

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first rodeo, but just a few few ground rules to help	24
Q. Uh-huh. Well, so this isn't your first	23
A. I don't recall the last time. Some time ago.	22
Q. How many times?	21
A. Yes.	20
Q. Correct. Have you ever been deposed before?	19
here.	18
A. No. Other than the fact they know that I'm	17
deposition?	16
Q. Did you talk to anybody at Reynolds about your	15
A. No.	14
when you prepared for the deposition?	13
Q. Okay. Any businesspeople from Reynolds present	12
works for Scott Cherry.	11
A. John I'm blanking on his last name. He	10
Q. And who was that?	9
Reynolds.	Φ
A. Yes. We had a one other attorney from	7
Q. Was there anybody else from Reynolds present?	σ
A. No.	Л
Q. Were any attorneys for CDK present?	4
A. Andi Gulley, Bryce, Scott Cherry, Michael.	ω
With whom did you meet?	N
Q. (By Mr. Nemelka) And with whom did you meet?	Н
Page 12	
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data processing services, in part; is that right?	24
Q. And I I think I understand that you sold	23
A. Yes.	22
correct?	21
Q. And you were a successful salesperson there;	20
A. Yes.	19
right?	18
Q. And then after Ford you joined IBM; is that	17
A. Yes, a little short of two years.	16
two years; is that right?	15
Florida, you worked at the Ford Motor Company for about	14
Q. And after graduating from the University of	13
A. Yes.	12
Q. Class of 1963?	11
A. Yes.	10
Florida, College of Business; correct?	9
Q. Okay. You graduated from the University of	∞
A. No.	7
truthful testimony today?	Q
Q. Is there any reason that you can't provide	σı
A. Thank you.	4
Okay?	ω
if you need one in shorter intervals, that's fine.	Ν
break about every hour, for me as well as for you. But	Н
Page 14	
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Yes

called the PowerDNS?	25
Q. And was the DNS that UCS marketed was it	24
A. Yes.	23
that right?	22
Q. UCS served, primarily, large dealerships; is	21
A. Yes.	20
continued to run UCS, right?	19
Q. And over the 1980s, 1990s and 2000s, you	18
A. Yes.	17
right?	16
software that was sold licensed to dealers; is that	15
the programming of some of the dealership management	14
Q. And, in fact, you were personally involved in	13
A. Yes.	12
dealerships; is that right?	11
dealership management system software to car	10
Q. And eventually, UCS developed and provided	9
A. Yes.	ω
right?	7
computer programming around this time as well; is that	σ
Q. And you impressively taught yourself	U
A. Yes.	4
Services, Inc.; is that right?	ω
point you left IBM and founded Universal Computer	N
Q. And you were at IBM until about 1970, at which	Н
Page 15	

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) I
Q. Okay. And the top-level holding company of	24
A. Yes.	23
holding company that owned Reynolds?	22
Q. And Dealer Computer Services was the was the	21
called Dealer Computer Services.	20
A. It's that's not the correct company. It's	19
wholly-owned subsidiary of UCS; correct?	18
Q. But with the acquisition, Reynolds became a	17
A. Yes.	16
company, right?	15
Q. And prior to the deal, Reynolds was a public	14
A. Yes.	13
in cash; is that right?	12
Q. October. Thank you. And UCS paid 2.8 billion	11
A. October.	10
Q. What what was the month?	9
A. Yes.	ω
though?	7
Q. Different date? It was oh, it was in 2006,	0
A. It was a different date.	σ
Reynolds and Reynolds Company; is that right?	4
Q. And then in August 2006, UCS acquired the	ω
was called Power.	Ν
A. Not originally, but later in its existence, it	Н
Page 16	

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Reynolds

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Universal

Computer

Systems

Holdings,

Q. (By Mr. Nemelka) Substan does 96 percent	25
believe it's, substantially, all.	24
A. Again, I don't know the answer to that. I	23
MS. GULLEY: Form.	22
charitable trust own?	21
Q. And what percentage of Spanish Steps does the	20
A. The A. Eugene Brockman Charitable Trust.	19
Q. And who owns Spanish Steps?	18
that.	17
A. I'm sorry. I I don't know the answer to	16
formed?	15
Q. (By Mr. Nemelka) Okay. When was Spanish Steps	14
is owned by Spanish Steps.	13
A. The Universal Computer Systems Holding, Inc.,	12
MS. GULLEY: Objection; form.	11
ownership structure?	10
Q. (By Mr. Nemelka) Okay. And what is the	9
structure is different than that.	ω
A. No. That's not correct. The the ownership	7
MS. GULLEY: Form.	σ
right?	ហ
owns about 96 percent of that holding company; is that	4
Q. And the A. Eugene Brockman Charitable Trust	ω
A. Yes.	N
Inc.; is that right?	Н
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16 A. That's correct. Q. Where is it based? 18 A. Bermuda. 19 Q. And when was the trust created? MS. GULLEY: Objection; form. 21 A. 1981. Q. (By Mr. Nemelka) Who were the trustees of the trust? MS. GULLEY: Objection; form.
A. That's correct. Q. Where is it based? A. Bermuda. Q. And when was the trust created? MS. GULLEY: Objection; form. A. 1981. Q. (By Mr. Nemelka) Who were the trustees of trust?
A. That's correct. Q. Where is it based? A. Bermuda. Q. And when was the trust created? MS. GULLEY: Objection; form. A. 1981. Q. (By Mr. Nemelka) Who were the trustees of
A. That's correct. Q. Where is it based? A. Bermuda. Q. And when was the trust create MS. GULLEY: Objection; A. 1981.
A. That's correct. Q. Where is it based? A. Bermuda. Q. And when was the trust create MS. GULLEY: Objection;
A. That's correct. Q. Where is it based? A. Bermuda. Q. And when was the trust creat
A. That's corre Q. Where is it A. Bermuda.
A. That's corre
A. That's
offshore trust; correct?
Q. (By Mr. Nemelka) Okay. And this is an
A. That's correct.
MS. GULLEY: Form.
11 98 98 percent of the of the company, right?
10 Q. (By Mr. Nemelka) So we're talking upwards of
A. I believe that's correct.
8 MS. GULLEY: Form.
owned by the charitable trust; is that right?
6 times that by by two, and then the rest of it is
5 Q. (By Mr. Nemelka) So 8/10ths of a percent so
A. That's correct.
3 MS. GULLEY: Form.
two and the charitable trust; is that right?
1 correct. And there are no other owners besides those
Page 19

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Q. (By Mr. Nemelka) And who is the trust	ъ 5
there is the there is a trust protector.	24
A. I I don't know the name of the person, but	23
MS. GULLEY: Objection; form.	22
authority to remove them as trustee?	21
Q. (By Mr. Nemelka) And who who has that	20
A. Yes.	19
MS. GULLEY: Objection; form.	18
be removed as the trustee?	17
Q. (By Mr. Nemelka) Could St. Johns Trust Company	16
I'm not familiar with how trusts trusts get set up.	<u>1</u>
A. I'm sorry. I can't give you an answer on that.	14
MS. GULLEY: Objection; form.	13
Bermuda as trustee?	12
Q. (By Mr. Nemelka) And who appointed the Bank of	11
trust company was Bank of Bermuda.	10
There's been a there's it was the original	9
A. They were not the original trust company.	œ
MS. GULLEY: Objection; form.	7
trust?	0
Q. And who appointed them as trustees of the	Л
A. Yes.	4
the trust?	ω
Q. (By Mr. Nemelka) Are they the only trustees of	Ν
Company.	Н
Page 20	

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GULLEY:

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Mr.

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not fami 0 iliar (Ву Again, with Mr. this Nemelka) გ ე an And area Objection; who 0 fi are law that the bene I'm Н

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- 0 f the trust? SIMGULLEY: Objection; form iar
- Kingdom and a11 \triangleright the There chari ը. Մ Ċ 39T myself, 0 f Bermuda, Уm wife, United МY brother, States his United wife
- \tilde{o} (Ву Mr. Nemelka) Excuse me What SPM that
- last one? A11 charities?
- \triangleright A11 a11 charities h T the United Ω tа tes and
- a L $\dot{\mathbf{L}}$ charities n. the United Kingdom
- every 0 501c3 What organization? does that mean, "all charities" ٠٠ Every
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(Ву

Mr.

Nemelka)

You're

the

chairman

and

CEO

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(Exhibit 636 was marked for	25
specific statement.	24
A. I'm sorry. I don't remember saying that	23
MS. GULLEY: Objection; form.	22
right?	21
you own your data and choose who you allow access to it,	20
Q. (By Mr. Nemelka) You've publicly told dealers	19
A. Yes.	18
MS. GULLEY: Objection; form.	17
should choose who has access to their data, right?	16
Q. (By Mr. Nemelka) And you agree that dealers	15
A. Yes.	14
MS. GULLEY: Objection; form.	13
dealers own their data, right?	12
Q. (By Mr. Nemelka) You've publicly stated the	11
A. Yes.	10
MS. GULLEY: Objection; form.	9
dealer's, right?	ω
that dealers generate in running their business is the	7
Q. (By Mr. Nemelka) And you agree that the data	Q
A. Yes.	U
MS. GULLEY: Objection; form.	4
departments; correct?	ω
Q. (By Mr. Nemelka) And data from their service	N
A. Yes.	1
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identification.) 2 Q. (By Mr. Nemelka) I've marked 3 Exhibit 636, which I will hand you. Mr 4 you recognize this document? 5 A. Yes. 6 Q. Was this an a public advert 7 you that Reynolds issued to the publ 8 A. This was done approximately 12 9 Q. And was it issued to the publi 10 A. Yes. 11 Q. And if you look at the first b 12 there, you say, "You own your data and 13 allow access to it," right? 14 A. Yes. 15 Q. You also told dealers with res 16 data, quote, "You're the boss." If you 17 correct? 18 A. Yes. 20 And that's a picture of you, t 21 advertisement? 22 A. Yes. Good picture, I might ad 23 A. Very nice one. And that's your signature
Q. (By Mr. Nemelka) I Exhibit 636, which I will ha you recognize this document? A. Yes. Q. Was this an a pu you that Reynolds issued A. This was done appro Q. And was it issued t A. Yes. Q. And if you look at there, you say, "You own you allow access to it," right? A. Yes. Q. You also told deale data, quote, "You're the bos correct? A. Yes. Q. And that's a pictur advertisement? A. Yes. Good picture, Q. Very nice one.
identification.) Q. (By Mr. Nemelka) I've Exhibit 636, which I will hand y you recognize this document? A. Yes. Q. Was this an a public you that Reynolds issued to t A. This was done approxima Q. And was it issued to th A. Yes. Q. And if you look at the there, you say, "You own your da allow access to it," right? A. Yes. Q. You also told dealers w data, quote, "You're the boss." correct? A. Yes. Q. And that's a picture of advertisement? A. Yes. Good picture, I n
Q. (By Mr. Nemelka) I've Exhibit 636, which I will hand y you recognize this document? A. Yes. Q. Was this an a public you that Reynolds issued to the A. This was done approximated by A. Yes. Q. And was it issued to the provious access to it," right? A. Yes. Q. You say, "You own your data, quote, "You're the boss." Correct? A. Yes. Q. And that's a picture of advertisement?
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identificati Q. (By Mr. Nemelka)
identi

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dealership." Do you see that?	25
recognizes that you need to share that data outside your	24
Q. And then it says, "You own your data. Reynolds	23
A. Yes.	N N
see that?	21
this webpage, it says, "Your Data, Your Way." Do you	20
first at the top of the of the text of this of	19
Q. (By Mr. Nemelka) And if you look at the	18
something I pay attention to.	17
not familiar with what goes on our website. That's not	16
A. It says it's Reynolds. I'm I'm personally	15
MS. GULLEY: Objection; form.	14
website. Does that look familiar to you?	13
Mr. Brockman, this is a printout from the Reynolds	12
I've marked as Exhibit Plaintiff's Exhibit 637.	1 1
Q. (By Mr. Nemelka) I've handed you a document	10
identification.)	9
(Exhibit 637 was marked for	∞
A. Sorry. I'm not familiar with that.	7
MS. GULLEY: Objection; form.	σ
on its website; correct?	UЛ
Reynolds also made similar representations	4
Q. You can put that aside.	ω
A. Correct.	N
Reynolds?	Н
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A. Yes.	25
MS. GULLEY: Objection; form.	24
business data belongs to you," end quote; correct?	23
Q. It says, quote, Reynolds acknowledges that your	22
A. Yes.	21
recognizes that the dealers own their data; correct?	20
Q. And the Reynolds standard DMS contract also	19
A. Yes.	18
standard DMS contract with its dealers; correct?	17
You're familiar with that Reynolds has a	16
aside.	15
Q. (By Mr. Nemelka) Thank you. You can put that	14
statement.	13
your data. Reynolds recognizes" I see that	12
A. Yes. It you know, where it says, "You own	11
MS. GULLEY: Form.	10
the dealers, right?	9
dealers generate in operating their business belongs to	ω
statement that we just looked at, that that data that	7
This is consistent with your public	Q
me strike that.	И
your public statement that that business excuse	4
Q. (By Mr. Nemelka) So this is consistent with	ω
A. Yes, I see that.	N
MS. GULLEY: Objection; form.	Н
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A. Yes.	о 5
correct?	24
Q. (By Mr. Nemelka) And their marketing efforts;	23
A. Yes.	22
MS. GULLEY: Form.	21
them in their service lane; correct?	20
Q. (By Mr. Nemelka) They use software to help	19
A. Yes.	18
MS. GULLEY: Form.	17
vehicle inventory first.	16
Q. (By Mr. Nemelka) Both. Vehic let's do	15
MS. GULLEY: Form.	14
vehicle inventory?	13
A. Umm, are you referring to parts inventory or	12
MS. GULLEY: Form.	<u> </u>
correct?	10
Q. (By Mr. Nemelka) Inventory management;	9
A. Yes.	∞
MS. GULLEY: Form.	7
management software, right?	Q
Q. Applications like customer relationship	О
certainly use some.	4
A. I wouldn't characterize it as "a lot." They	ω
applications besides DMS; correct?	N
Q. (By Mr. Nemelka) Dealers use a lot of software	\vdash
Page 29	

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Certified Interface, which is entered into whoever	25
A. We have a program which is called the Reynolds	24
MS. GULLEY: Objection; form.	23
for example, independent integrators; is that right?	22
dealer dealers can't grant access to their data to,	21
made a lot of exceptions, has taken the position that	20
Q. (By Mr. Nemelka) But Reynolds, although it's	19
porting facilities that we have.	18
you know, on their own. They can access it through	17
A. They the dealers have access to their data,	16
MS. GULLEY: Objection; form.	15
who has access to their data, do you?	14
Q. (By Mr. Nemelka) You don't let dealers choose	13
A. I disagree.	12
MS. GULLEY: Objection; form.	11
Q. But that's not quite true, is it, Mr. Brockman?	10
A. Yes.	9
you allow access to it." Remember that?	ω
publicly told dealers, "You own your data and choose who	7
Q. (By Mr. Nemelka) And above, we saw that you	Q
A. Correct.	И
MS. GULLEY: Form.	4
access to dealer data to work, right?	ω
Q. (By Mr. Nemelka) And these applications need	N
MS. GULLEY: Form.	Н
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not I'm not an expert in their their practices.	N 5
A. They have lots of different practices. I'm	24
practices were?	23
Q. (By Mr. Nemelka) You don't know what CDK's	22
positions have been on this issue.	21
A. I'm not familiar with what CDK's historical	20
MS. GULLEY: Objection; form.	19
what CDK's position once was; correct?	18
Q. (By Mr. Nemelka) And that's different from	17
We do not allow that.	16
A. As far as unattended access, that's correct.	7
MS. GULLEY: Objection; form.	14
automated way, you don't allow that, do you?	13
Q. But in terms of access to their data in an	12
Authenticom.	11
and send those reports in electronic form to	10
A. They're perfectly free to run reports and	9
their data to Authenticom, you don't allow that, do you?	∞
Q. And so if a dealer wanted to grant access to	7
A. We do not.	0
you?	Л
integrators, like Authenticom, into the RCI program, do	4
Q. (By Mr. Nemelka) You don't let independent	ω
data from a security standpoint.	N
they want to share data with, that covers protections of	Н
Page 31	

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Automotive News around this time, Mr. Brockman?	N 5
Q. (By Mr. Nemelka) Did you grant an interview to	24
review it.	23
MS. GULLEY: You can take a second to	22
A. Not specifically.	21
MS. GULLEY: Objection; form.	20
Automotive News article?	19
9th 19th, 2007. Mr. Brockman, do you recognize this	18
Deal puts Brockman in the spotlight," dated February	17
Automotive News article entitled "Question & Answer:	16
638 Plaintiff's 638, which I've handed you. It's	<u>1</u>
Q. (By Mr. Nemelka) I've marked this Exhibit	14
identification.)	13
(Exhibit 638 was marked for	12
recall can you give me more information?	11
A. I'm sorry. I don't I don't remember or	10
right?	9
couldn't imagine that that was truly CDK's position,	œ
said that, from a business standpoint, you you	7
Q. (By Mr. Nemelka) In fact, back in 2007, you	σ
CDK does or doesn't do in this regard.	И
A. Again, I'm I'm not knowledgeable about what	4
MS. GULLEY: Objection; form.	ω
independent integrators, right?	N
Q. You knew that CDK did let dealers use	Ц
Page 32	

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News; correct?	25
the contents of an interview that you gave to Automotive	24
Q. (By Mr. Nemelka) This reflects an interview	23
A. Okay. What is your question?	22
MS. GULLEY: Objection; form.	21
answer.	20
to ask you about one about one one question and	19
Q. (By Mr. Nemelka) Sure. I'm I'm only going	18
it's got a lot of information on it.	17
A. If you let me finish reading this back page,	16
MS. GULLEY: Objection; form.	15
to Automotive News, Mr. Brockman?	14
though, this is reflects an interview that you gave	13
Q. (By Mr. Nemelka) Sure. Do you recognize,	12
read it.	11
A. I would like to have a little bit of time to	10
deposition protocol order.	9
MR. NEMELKA: Andi, please comply with the	∞
review it.	7
You haven't offered him the opportunity to	0
MS. GULLEY: Objection; form.	UЛ
reflecting the contents of that interview; correct?	4
Q. (By Mr. Nemelka) And this is an article	ω
A. I believe so.	N
MS. GULLEY: Objection; form.	Н
Page 33	

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opposite, I can't imagine from a business standpoint	N U
ADP's position. Other than to be obstinate, than to be	24
Q. And you gave an answer. "I don't understand	23
A. Yes.	22
Do you see that question?	21
data." What are your thoughts about that?	20
their vendors with a user ID and password to extract	19
Dealer Services will not prohibit dealers from providing	18
Q. (By Mr. Nemelka) Right. So it says, "ADP	17
A. That's my understanding.	16
MR. RYAN: Objection.	15
correct?	14
the dealer services was spun off and became CDK;	13
not" excuse me, the ADP that's referred to here was	12
Q. (By Mr. Nemelka) "ADP Dealer Services will	11
MR. RYAN: Object to form.	10
MS. GULLEY: Objection; form.	9
A. Yes.	ω
correct?	7
asked you, "ADP Dealer Services" now, ADP is now CDK;	σ
the second page, the question that that Automotive	σ
Q. (By Mr. Nemelka) Correct. And if you turn to	4
after the acquisition.	ω
A. Yes. That was approximately a month and a half	N
MS. GULLEY: Objection; form.	Ъ
Page 34	

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20 24 22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim posi posi bе made probably Ω than certainly allowing that understand correct independent that rankly tandpoint Уm tion tion. Ю· t 0 Ö position. changes ∞ \triangleright that's opinion μ. Ьe d D Sew And It' change \Box No. Yes Yes Sey (Ву (Ву not that ADP's opposit would Ω they integrator truly that, Mr. $\mathbb{N}_{\mathbb{K}}$. that that that Уm what NS. .S⊠ ĭS. = Now, that don't that' bе did position. understanding Do Nemelka) Nemelka) they didn' GULLEY: their D GULLEY: GULLEY: accurately a f \vdash МY you exactly not position." ter Ω Hsaid. agree truly did opinion \vdash Ω can't position დ Ф Ф they? doas automated awhile And not And Objection; Objection; Object what What with Other that? their reflects imagine dealers CDK gtop that that they Ô ion; change \vdash that you than dі said And position access аf dealers <u>Д</u> probably Н ter rom form form what form from knew t 0 frankly change that ი ე And they've фe t O awhile മ using you that they from busine that' obstinat their Hthei And change it don't said? CDK's they made Page have would data ω

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Ω

13 12 11 10 9 \vdash ∞ 7 \circ О 4 ω \sim posi that the μ. HΩ Ħ good tion, not question? position \circ Ø for Н amiliar (Ву (Ву though, both Mr. Mr. .SM MS. until MR. HHH UNIDENTIFIED UNIDENTIFIED defendants, with Nemelka) Nemelka) GULLEY: WITNESS NEMELKA: until GULLEY: Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL years years later Sure CDK Objection; SPEAKER: Objection; SPEAKER: Yes I'm right? later, didn' sorry. though; And \vdash Okay, Mike, right? CDK form form change Could correct didn't one thank tha you objection change Page repeat ω

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seri . ന 0 regard. Of (Ву changes Mr. Nemelka) guess But n T the meantime, before

Mr. CDK Brockman, changed, CDK Reynolds "the .SM GULLEY: data wars"; engaged Objection; isn't uT what that form you right? called,

who has Ve not ever used that term, O S Н don't know

"data \circ wars"? (Ву $\mathbb{M}_{\mathbb{K}}$ Nemelka) You've never used the term,

Objection;

form

SM GULLEY:

20

24

23

22

21

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19

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14

Again,

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racked

what

ADP

has

done

n T

 $215-241-1000 \sim 610-434-8588 \sim 302-571-0510 \sim 202-803-8830$ Veritext Legal Solutions

Q. Including OEMs, right?	ω
A. Yes.	2
l vendors; correct?	10
Link! would then provide the dealer data to third-party	0
9 Q. (By Mr. Nemelka) And then DMI and Integra	9
A. Yes.	ω
MS. GULLEY: Objection; form.	-7
creating log-in credentials for them, right?	9
grant DMI and Integra Link! access to their data by	Г
Q. (By Mr. Nemelka) And Reynolds' dealers would	4
extensively.	\Box
A. Yes. They they hacked our systems	2
MS. GULLEY: Objection; form.	
dealers; correct?	0
Link! provided access to the data belonging to Reynolds'	9
Q. (By Mr. Nemelka) And DMI and Integra	∞
7 A. Correct.	7
MS. GULLEY: Objection; form.	9
integrators, like DMI and Integra Link!; correct?	О
integrators, but it also had its own independent	4
system in the sense that it let dealers use independent	ω
Q. (By Mr. Nemelka) Now, CDK not only had an open	N
A. No. (Inaudible.)	\vdash
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25

 \boxtimes

Yes.

24

MS.

GULLEY:

Form.

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 \sim

 \sim

1	
Mr. Anenen; correct?	23
you you sent this email to Mr. Workman and	22
Q. Thank you. So if you look at the email that	21
A. Yes.	20
Mr. Brockman?	19
Q. (By Mr. Nemelka) Have you finished reading it,	18
MS. GULLEY: Form.	17
attach you made an attachment; correct?	16
Q. (By Mr. Nemelka) And to this email, you	15
A. Yes.	14
MS. GULLEY: Objection; form.	13
Anenen, dated Sunday, June 10th, 2007. Do you see that?	12
email from you, Bob Brockman, to Ron Workman and Steve	11
describe it and then you can look at it. This is an	10
previously marked as Plaintiff's Exhibit 442. I'll	9
Q. Mr. Brockman, I've handed you what has been	∞
A. Yes.	7
mean, right?	Q
Q. (By Mr. Nemelka) You understand that's what I	σ
A. That's correct.	4
MS. GULLEY: Form.	ω
the car manufacturers, like Ford, Chevy, Toyota, right?	N
Q. (By Mr. Nemelka) And when I say "OEMs," I mean	Н
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25

 \tilde{o}

Steve

Anenen

SPM

the

CEO

0 f

CDK?

24

 \boxtimes

Yes.

	<u>ی</u> ٦
Q. (By Mr. Nemelka) Is this the only time you	24
A. No.	23
MS. GULLEY: Objection; form.	22
meet meet with executives from CDK; correct?	21
Q. And at these annual conventions, you frequently	20
A. Yes.	19
Mr. Workman?	18
Q. And at this convention, you you met with	17
A. Yes.	16
Q. Is it once a year?	15
A. There's an annual convention and trade show.	14
Q. And what does that mean, "at NADA"?	13
A. It's the National Auto Dealers Association.	12
is NADA?	<u>1</u> 1
at our initial meeting on the subject at NADA" what	10
Q. And then you said then you write, "As I said	9
A. Yes.	œ
opportunities." Do you see that?	7
"Please see the attached thoughts regarding our mutual	0
Q. And in the third third line down, you write,	Л
A. Yes.	4
there?	ω
Q. And Ron Workman was a senior vice-president	2
A. That's correct.	Н
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25

ever

met

with

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CDK

executive

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NADA?

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10

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4
6 I think
7 was a
8 further
9 decided
.0 .0

- 14 13 12 11 systems † 0 do? t 0 extract \Box believe data u. that the accessing manner that dealership DMI and that
- about their \circ other But entities ф ф മ least joint were here, venture doing you t 0 had μ. do \Box t 0 proposed that; bе proper correct? talking
- forming NS. **U**-GULLEY: Objection; form.

17

16

15

- цb gnificant attractive \circ (Ву n T Mr. opportunity your Nemelka) email, that didn' You described could be \Box you? qui i t Ċ ങ മ
- the Cas \square Q T further examination, you know, that was not

2

24

23

NS.

GULLEY:

Objection;

22

21

20

19

пo

qo

their

proposals.

18

What

Ι'n

doing

ი ე

Ω.

I'm

I'm

commenting

MR. NEMELKA: Let me finish my question,	25
MS. GULLEY: Objection	24
original conception that CDK	23
Q. (By Mr. Nemelka) But you said that was the	22
never got that far.	21
A. From a thought standpoint, this this project	20
MS. GULLEY: Objection; form.	19
venture, right?	18
Authenticom would not be able to compete with this joint	17
Q. (By Mr. Nemelka) So competitors like	16
from CDK.	15
A. That that was the the original proposal	14
MS. GULLEY: Objection; form.	13
correct?	12
provide data access to Reynolds and CDK, not others;	1 1
only the Reynolds and CDK joint venture would be able to	10
Q. (By Mr. Nemelka) The thought was, though, that	9
this regard.	∞
followed up on. Specifically, we did not do anything in	7
A. Again, this was an early-on idea which was not	Q
MS. GULLEY: Objection; form.	Л
this joint venture?	4
the data for Reynolds and and CDK dealers, or only	ω
to this data services joint venture be allowed to access	N
Q. (By Mr. Nemelka) And would other competitors	Н
Page 42	
	1

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20 24 22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash along busy SPM when not but whi but 0 extracting proposing ori And would third know response Ť . ch ginal not, go approximately you what n T _ Ö with parties Н contribute 0 anywhere. could Н Ω a11 don't you were proposal (Ву മ Αt Again, (Ву (By Mr. was Sew Again very, the data this kinds μ. Mr. $\mathbb{Z}_{\mathbb{N}}$ have know, \Box going а † SIMconsidering SMhave \Box 1 certainly for there echnology very that particular Nemelka) SPM the Nemelka) Nemelka) would 0 f seven months GULLEY: Τt 1 GULLEY: from and absolute d vendors I'11 DMI did operational laid point large was CDK, with \vdash Ьe don' not did business repea out for this Well,Αt noA Objection; Objection; point you n i Reynolds company. knowledge from though, happen exist, \Box there this accessing Ċ said time after joint know know, And again here details Reynolds' h T t 0 Sew time, SPA whether right thi where tha the this systems venture time, you Ηt form form hazy another Ω this DMS impossible SPA acquisition were SPM SPM what new wrote and this knowledge DMS j. sys project and цb extremely for DMI you co-entity tems ADP document, exists ini that correc outside me this ĊŢ. Sew did ial t 0 The CDK **ن**ې

Q. Is this a phone call?	2 5
A. Steve Anenen.	24
Q. (By Mr. Nemelka) And who at ADP?	23
place between myself and ADP.	22
A. Yes. These were talking points that would take	21
MS. GULLEY: Objection; form.	20
that you created for ADP Data Agreement?	19
Q. Okay. Do you recognize these as talking points	18
A. Yes.	17
Mr. Brockman?	16
Q. (By Mr. Nemelka) Did you hear that,	15
MS. GULLEY: Objection; form.	14
Agreement Talking Points." Okay?	13
July 29th, 2012. And the file name is "ADP Data	12
custodial file and that it was date last modified was	11
produced by by your counsel, that this came from your	10
that the metadata for this document states that, as	9
Exhibit 639. And, Mr. Brockman, I'll represent to you	ω
Q. (By Mr. Nemelka) I've handed you Plaintiff's	7
identification.)	0
(Exhibit 639 was marked for	И
And again I repeat again, this project went nowhere.	4
A. Again, that was in response to their proposal.	ω
MS. GULLEY: Objection; form.	2
right?	Н
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first one you say, "Unattended remote access to Reynolds	25
a few of the bullet points here, Mr. Brockman. The	24
Q. (By Mr. Nemelka) I just want to ask you about	23
got them quite done.	22
Whether I got them all done or not, I I don't think I	21
covered. These were the points that I wanted to cover.	20
A. I'm not sure what all points were actually	19
MS. GULLEY: Form.	18
Q. And did you deliver these talking points?	17
A. Yes.	16
Mr. Anenen?	15
that you prepared for that phone conversation with	14
Q. A few months? And these are the talking points	13
A. Months.	12
time," meaning a few weeks or months?	11
Q. (By Mr. Nemelka) "Considerable length of	10
considerable length of time afterwards.	9
be imminent. It was not imminent. It was at some	ω
this document, thinking that a phone call was going to	7
A. I don't know what date I remember creating	σ
MS. GULLEY: Form.	И
around the time of July 29th, 2012?	4
Q. (By Mr. Nemelka) And was it a phone call	ω
A. Yes.	N
MS. GULLEY: Objection; form.	Н
Page 45	

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 23	22 ini	21	20	19 pl	18	17	16 aç	15 ti	14	13 us	12 Tì	11 go	10 1i	9 t1	8 1.0	7	თ	Л	4 ha	ω	N	<u>Б</u>		
A. I I had requested a call. Whether he called	nitiated by you, or Mr. Anenen?	Q. (By Mr. Nemelka) And is this a call that was	MS. GULLEY: Objection; form.	phased shutdown, as opposed to an abrupt stop.	A. The the data agreement involved a a	MS. GULLEY: Objection; form.	agreement that you envisioned entering into with CDK?	itled "Data Agreement." And what was the data	Q. And and the data agreement, the document is	ugly.	That was a a statement of fact. The fact was pretty	going to cease," that was not a pleasant statement.	ine, "Unattended remote access to Reynolds systems is	he worst hackers out there. And and this first	identified as some of the most, you know they were	A. That's right. CDK or CDK subsidiaries were	Q. Including by CDK; correct?	A. That's correct.	happening on the Reynolds system, right?	Q. So 2012, unattended remote access was still	A. Yes.	systems is going to cease." Do you see that?	Page 46	

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25

 \tilde{o}

You

requested

the

call?

A. He didn't make a specific reply to that	25
to Reynolds systems is going to cease?	24
respond when you told him that unattended remote access	23
Q. And what what did he respond how did he	22
A. Uh-huh. (Witness answers affirmatively.)	21
minutes?	20
Q. So on these topics, the call lasted about 15	19
He wanted to talk about other things.	18
A. Mr. Anenen did not want to address the issues.	17
unproductive?	16
Q. What does that what why was it	15
minutes of of just unproductive conversation.	14
15 minutes' worth of this active discussion and then 45	13
about it was an hour-long call, and there was about	12
A. It was a rather unusual call. There was	11
in response?	10
Q. (By Mr. Nemelka) And what did Mr. Anenen say	9
time or not.	ω
A. I don't recall whether or not it was the first	7
MS. GULLEY: Objection; form.	Q
accessing the Reynolds systems?	UΊ
that you had discussed with Mr. Anenen having CDK stop	4
Q. (By Mr. Nemelka) And this is the first time	ω
A. Yes.	N
MS. GULLEY: Objection; form.	Н
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Page

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim ind guy, Ω using thi Again, would he progress proposal Ω interested know. eparate tatement did . Ω ication phone and 0 \circ \circ \circ Authenticom continue not Не ' he's he' And No here Н Αt (Ву (Ву (By rom Ω one call? make wouldn would You know, snf Ω മ Mr. Mr. $\mathbb{M}_{\mathbb{K}}$. what very the SIengaging Не NS. SIMФ Reynolds way t 0 Ţ Ф Ф Ċ person say did Nemelka) Nemelka) Nemelka) DMS; SPM that GULLEY: access \Box for GULLEY: positive 1 GULLEY: о К nice he' say not † † Steve the his that has point, n T Ω correct guy was separate the not answer strike the other general 1 t s Did Anenen Αt Objection; Objection; Meaning Object response Reynolds that Ω this he discussions own he unlikely μ. whether that that \Box from did ion; give kind ი ე didn't response he time software മ not specifi the form form system? form said you 0 f very, he to make Reynolds DMS person further, that say t 0 application, Ω very Ф issue no, but CDK lot SPM nice a É But you 0 f

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13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash Case 3:20-cr-00371-WHA from tha you that цb collecting Ω used agent \Box considered ADP Authenticom 0 \triangleright d sells 0 sites (Ву Н the They don't don't ou Mr. to .Sĭ SIMAuthenticom other for data; the Nemelka) (Or know GULLEY: GULLEY: Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL Reynolds they provided purpose dealer some μ. j. H Ŋ that **∀** other മ noA Objection; Objection; would t O would right? Reynolds อธน say, Reynolds Do മ require consider you in marketing service "Batch form form agent 0 0 agent) that type that Authenticom Page 50 of 459 u, this programs collect Page σ ū

 \triangleright Yes

this Reynolds proposed $\overset{\circ}{\circ}$ would (Ву Mr. data continue Nemelka) agreement t O นรе 0 S with CDK; you Authenticom envisioned ა ე that even that right? after

16

15

14

.Sĭ GULLEY: Objection; form

 \vdash don't think that, you know, \mathbf{H} would

19

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you process suggestion here things about characterize know, that that' t₀ 3 8 8 7 long 9 d involves Ø here dn this done described 10g term it's short paragraph Ф some long collection you in \square term. ffort this term. know, n T document that There 0 f And longer Anytime data, way what Ŋ than ou here t 0 that We ' There's implication tear what ტ ც you there's talking ıt the have dn ש

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MS. GULLEY: Objection; form.	25
you see that?	24
the specific RCI agreement is directly between us." Do	23
an agent of ADP or Reynolds is not an issue as long as	22
here, "The use of a 3rd-party acting under contract as	21
Q. (By Mr. Nemelka) You said "agents." You say	20
MS. GULLEY: Objection; to the sidebar.	19
Q. We have some documents on that.	18
A. In in the in that particular regard.	17
Q. (By Mr. Nemelka) All right, well	16
A. Again, I'm not aware of what's going on.	15
MS. GULLEY: Objection; form.	14
right?	13
years after this, Reynolds continued to use Authenticom,	12
Q. (By Mr. Nemelka) Certainly, you know, for	11
occurred.	10
A. I'm not aware of of how long that that	9
MS. GULLEY: Objection; form.	ω
Authenticom clear to through 2017, right?	7
Q. (By Mr. Nemelka) Reynolds continued to use	Q
A. Yeah.	И
MS. GULLEY: Objection; form.	4
Q. (By Mr. Nemelka) This is 2012, right?	ω
would continue to use Authenticom.	N
immediate, you know, time frame would be that we	Ъ
Page 51	

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MS. GULLEY: Objection; form.	25
see that?	24
specific RCI agreement is directly between us." Do you	23
agent of ADP or Reynolds is not an issue as long as the	22
that "The use of a 3rd party acting under contract as an	21
Q. (By Mr. Nemelka) Well, what you write here is	20
data.	19
with the collector of the data and also the owner of the	18
What we want to do is we want to have direct contracts	17
is and that's that, you know, we don't use agents.	16
A. I think what what we're talking about here	15
MS. GULLEY: Objection; form.	14
agents; correct?	13
those who go and collect the data on your behalf as your	12
Q. (By Mr. Nemelka) And so you would consider	11
A. Correct.	10
MS. GULLEY: Objection; form.	9
owner of data? That would be the dealer, right?	ω
Q. (By Mr. Nemelka) Well, the contract with the	7
with the the owner of the data.	0
and that's that we'd want to have a contract directly	Л
A. What the focus in this particular passage is	4
MS. GULLEY: Objection; form.	ω
Q. (By Mr. Nemelka) What did you mean by that?	N
A. Yes.	Ъ
Page 52	
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a section called "Use of Agents." You say, "The use of	N 5
Q. My simple question was is that you have here	24
A. I need to reread this.	23
question, Mr. Brockman?	22
Q. (By Mr. Nemelka) Do you need me to repeat the	21
MR. NEMELKA: Sure.	20
question.	19
MS. GULLEY: Well, he can answer the	18
like that.	17
MR. NEMELKA: We'll just leave the record	16
UNIDENTIFIED: Same objection.	15
MS. GULLEY: It was not not intentional.	14
MR. NEMELKA: It's okay.	13
MS. GULLEY: I'm so sorry, Mike.	12
question. I asked the witness.	11
MR. NEMELKA: That's improper to answer the	10
sorry.	9
Objection; form. I'm sorry. It was I'm	œ
MS. GULLEY: No.	7
that go and collect data on your behalf; correct?	σ
Q. (By Mr. Nemelka) And "an agent" being those	Л
with any use of an agent.	4
one directly between us and and not, you know,	ω
clearly that we the agreement we want is we want	2
A. Well, I I think that's that states	H
Page 53	

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and we're off the record.	25
THE VIDEOGRAPHER: The time is 10:25 a.m.,	24
MS. GULLEY: Let's take a break.	23
MR. NEMELKA: Sure.	22
Mike?	21
MS. GULLEY: Are you at a stopping point,	20
A. I'm not aware of that.	19
MS. GULLEY: Objection; form.	18
Link! were for Reynolds?	17
issued log-in credentials, just like DMI and Integra	16
Q. (By Mr. Nemelka) Did you know that they were	15
A. No.	14
MS. GULLEY: Objection; form.	13
data on a CDK system?	12
Q. Okay. Did you know how Authenticom accessed	11
A. I think I'm referring to DMI, Integra.	10
and collect the data on your behalf; correct?	9
agents that you're referring to are those that would go	œ
Q. (By Mr. Nemelka) And my question is that the	7
A. Yes.	0
MS. GULLEY: Form.	σ
take responsibility for their agents." Do you see that?	4
agreement is directly between us either of us would	ω
Reynolds is not an issue as long as the specific RCI	N
a 3rd party acting under contract as an agent of ADP or	Н
Page 54	

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20 24 22 19 28 17 16 15 14 13 12 11 10 23 21 20 9 ∞ 7 \circ О 4 ω \sim \vdash that emai μ. what we've going that where qualified which bandit access important Ω erminology, emporary you \vdash Ω МY that Ω \circ ituation case t 0 addresses seen Ω that's what to decide 0 connotation gtop Ť The That' (Ву SPA n T the S D tha They're the fit you know, Ω $\mathbb{M}_{\mathbb{K}}$. Mr. has nature Ċ answer been what used Ω NS. hacking. where Reynolds Ω ways alled \Box completely have O from from, S D Nemelka) t 0 Nemelka) going GULLEY: used WITNESS GULLEY: facilitate μ. select temporary do 0f t o that Ω everybody's Ф മ and **∀** (D with that lot "whitelis whitelist system; t 0 They're ransi S O K you issued you group get Of And different Are That Objection; No that ი ე email deal ロで \Box access problems ional you no. μ. straight correct going SPM user agreed T 0 orderly \Box you . S process Ť with SPA people Н The uT S C create IDs NoA nished than, form t 0 used Whitelist andpoint, \vdash with spam 2000 that stand-down, think gtop Sew know that you'll And, you with the spam $^{\rm Z}$ emai they're മ used was μ. were being you only know <u>.</u> that \Box CDK's Brockman that' Page acce: emai n L know, МA time Ω 1d And \vdash Ω 1 О n T

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Case 3:20-cr-00371-WHA thes that D Ω Ю protected МŽ (Ву knowledge Mr. user Nemelka Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL 0 É IDs the for บรе 0 S CDK, where 0 f that the Reynolds term SPM Page 57 of 459 issue that Page you σ

 \vdash

MS. GULLEY: Form

t o agreement they' ituation, gtop R R being That you know, where they're Ιt bandits. Sew SPM one going agai 0 f And t 0 the ָׁם, it's gtop this firs Н actors Ф hacking ը. \Box wind-down and in. temporary foremost, that They' wind-down Кe that going

0 (Ву Mr. Nemelka) Reynolds did i t Н 02 CDK

before 2015, didn't it?

MS. GULLEY: Objection; form

A. Not to my knowledge.

 \circ (Ву M_{Σ} . Nemelka) Okay **∀**e handed you

Exhibit -- Plaintiff's Exhibit 640.

(Exhibit 640 was marked for

identification.)

dat you еd can 뙤 riday, read (Ву $\mathbb{M}_{\mathbb{K}}$. Н-Ċ February Nemelka) It's цb \sim 0 email And 2013 I'11 from you, t O Ron describe Lamb Mκ μ. \Box Brockman Н and then

A. I'm familiar with this issue here

Q. Are you finished reading

20

24

23

you

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minute

t 0

read

22

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash your what wha t 0 the Ω Ω tha bandi reached reads that' [involved] -ssue ituation Ô orrectly Ω \Box 7 exist feeding Ω Ħ email? we'11 μ. \Box ļ sorted $_{\mathbb{Q}}^{\mathbb{N}}$ Ω Ω description this that And "Obviously whereby and Ω get Will n T L O a11 will do what 0 the Ŋ we've [during] 20 out, which the ш-Н SIyou We about μ. Ω And causing "Part data Ω begin entrance the we've hacker sometimes have . († $_{\mathbb{O}}^{\mathbb{V}}$ created GULLEY: continue μ. Hი ე 0 Ċ me dealership you Áq Ť and 0 think will ი ე the Н them done ß that the been thi finish not that bandi know, into μ. transition that the Ω _ circumstances issue barriers മ Ф Objection; \Box over Ö getting Ω [that] grea \Box Ω formal barrier the the been you К procedures' person ВÖ ead that' the മ Ċ issue RCI user മ know, tha deal going agreement period. communi agreement years temporary And blocks world form გ Ի-ĊŢ. reflected H 0f las around the what g not temporarily μ. specifi \Box cated problem. Ω \Box Уď war O Tor somebody sentence listening basi And has happens continue Ω the the n T with and \Box മ Ö that long OEM allow the 0 ω -1.

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A. And the characterization that this particular	24
MS. GULLEY: Are you	23
A. No. I I disagree with that statement.	22
MS. GULLEY: Form.	21
its security processes?	20
creating these protected user IDs that are exempt from	19
the dealer that it's hypocritical for Reynolds to be	18
Q. (By Mr. Nemelka) Did you do you agree with	17
A. I see, you know, what you have read.	16
MS. GULLEY: Form.	15
Q. My question is: Do you see that?	14
MS. GULLEY: Form.	13
Do you see that?	12
how is this still not a security problem."	11
were told was a security problem. So my questions is	10
sudden, Reynolds is calling me to set up exactly what we	9
out these companies in one way or another. Now all of a	œ
your customer with 'security' enhancements that locked	7
Reynolds has pretty much pissed off a large majority of	0
hypocritical that for the better part of 3-4 years	И
Then he goes on, "I find it extremely	4
Reynolds system."	ω
Integralink and DMI to allow non-regulated access to our	Ν
Q "about setting up user IDs for both	Н
Page 60	
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writer,

this

Christopher

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Upright,

that

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have,

20 24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash were why, 0 departed security knowledge t 0 Ф Ф dealers reasons here, know, three quote nconveniences. Ť ccess, characterizat CDK he S T ¥ ⊕ many 0 \circ 0 \triangleright 0 and 9 hackers' over angered ф said do. that didn't four ıta And And To issues (Ву Н There Dealers **∀** (D instances 0 don' Н the those access M_{Σ} . just they they you' You dealers SIMyears, 1 \Box has ion മ they? access S D to, Οfi **∀** extent know, number \mathcal{F}_{Θ} Nemelka) left have were ₩ O don't issues; transitioned, GULLEY: obviously the been policies, you aware you leave have, There's any, Reynolds n T that leaving there 0 f And have know, some, know, many, you that correct you you ano it, Objection; Reynolds **∀** (D that's dealt were OU that right? but number know, know that' Reynolds know, can don't over customers during question n. many instances information, ascertain, with \Box exactly keeps this Ω racking, that 0 fi Cases ratcheted form way you this rt for doesn' dealerships over small correlates issue there track too know what ¥ O CDK where time that \Box the you know, strong can't i f minority 0 down, Ω because happened Н been . T period, Page las the T. dat that you 0 К 61

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corrected.	25
security check a little too aggressively until that's	24
code which is actually, you know, performing the	23
Until such time as as we have our our piece of	22
what the new user ID will will exempt them from.	21
causing this particular customer unhappiness, that's	20
A. The the specific security issue that is	19
MS. GULLEY: Objection; form.	18
apply to those protected user IDs, right?	17
Q. (By Mr. Nemelka) Security processes will not	16
A. I think it means what it says.	15
MS. GULLEY: Objection; form.	14
does that "exempt" mean?	13
there will exempt from the security processes." What	12
is a special one that we know about and they" "and	11
Q. (By Mr. Nemelka) You wrote, "The new USER-ID	10
A. I'm sorry. I'm not understanding.	9
MS. GULLEY: Objection; form.	ω
"exempt" mean?	7
IDs being exempt from security processes, what does	Q
Q. (By Mr. Nemelka) In your email about the user	И
this is, you know, a very tiny minority.	4
dealers that have left us over data access, but but,	ω
A. I would say that there there are some	N
MS. GULLEY: Objection; form.	Н
Page 62	

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) I
forwarding an email from you, Mr. Brockman, to Robert	24
email from Bob Schaefer to Howard Gardner at CDK	23
Exhibit 641, which is an email the top email is an	22
Q. (By Mr. Nemelka) I've handed you Plaintiff's	21
identification.)	20
(Exhibit 641 was marked for	19
aside.	18
Q. (By Mr. Nemelka) Okay. You can set that	17
A. I'm not aware of that.	16
MS. GULLEY: Objection; form.	15
were for data access in an automated way?	14
aware that that that protected user IDs for CDK	13
Q. (By Mr. Nemelka) You weren't you're not	12
can't tell from this.	11
system. Exactly, you know, what they did with that, I	10
ability to for, you know, a person to log on to the	9
A. Again, the the user ID, you know, gave the	Φ
MS. GULLEY: Objection; form.	7
Q. (By Mr. Nemelka) That was protected?	Q
MS. GULLEY: Objection; form.	И
correct?	4
Link! had to the Reynolds system was automated access;	ω
one real quick. The access that DMI and Integra	N
Q. (By Mr. Nemelka) You can set that aside. Oh,	1
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N 5

Schaefer

п

November

25th,

2013

Do

you

Φ Φ

your

email

)
Q. (By Mr. Nemelka) authority to talk to CDK	24
A. That is correct.	23
MS. GULLEY: Objection; form.	22
Reynolds executive; correct?	21
Q. So this is you giving Mr. Schaefer who is a	20
A. Yes.	19
subjects as per our conversation." Do you see that?	18
authority to pursue discussions with ADP on these	17
2013 to Robert Schaefer where you write, "Bob, you have	16
from the top you sent an email dated November 25,	15
Q. Yes. So you sent an email it's the second	14
A. Please repeat the question.	13
Q. Okay, thank you.	12
A. Yes.	11
Q. Have you finished reading them?	10
A. Again, I	9
Q. Okay.	ω
A. Please, let me read the document.	7
your email to Mr. Schaefer, if I could.	0
the document. I just want I just want to point out	UΊ
Q. (By Mr. Nemelka) Let me I'll let you review	4
A. Sorry. If you will give me a moment to	ω
MS. GULLEY: Objection; form.	N
to Mr. Schaefer where you write on November 25th, 2013?	₽
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email

below.

Right?

you turn to the next page one of the things that	25
Q. (By Mr. Nemelka) Right. And one of the if	24
things.	23
actually do anything. It's permission to talk about	22
He does not have this does not give him permission to	21
A. Yes. I gave him authority to discuss with ADP.	20
MS. GULLEY: Objection; form.	19
Mr. Schaefer, right?	18
you have been granting Mr that you granted	17
Q. (By Mr. Nemelka) And that's the authority that	16
A. Yes, I do.	15
MS. GULLEY: Objection; form.	14
see that?	13
discussions on a general framework with ADP." Do you	12
with ADP, and he has granted you the authority to pursue	1 1
"Bob Brockman would like to work toward an agreement	10
Q. And here the first bullet point he says,	9
I'm not familiar.	Φ
Whether or not he's considered an executive, I'm not	7
A. I'm aware of the fact that he works for CDK.	Q
Howard Gardner is the CDK executive, right?	Л
an email that Howard Gardner sent to Mr. Schaefer. Now,	4
Q. (By Mr. Nemelka) And in the email that it's	ω
A. Yes. That that is correct.	N
MS. GULLEY: Objection; form.	Н
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	7

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A. Okay. We're now down to No. 2?	25
MS. GULLEY: Form.	24
"Non-OEM Third Parties"?	23
Q. (By Mr. Nemelka) For the non No. 2,	22
MS. GULLEY: Form.	21
right?	20
to, like, customer relationship management and so forth,	19
manufacturers, but the other applications you referred	18
Third Parties." So that would be, not car	17
Q. The next one, you say or here is "Non-OEM	16
planned stand-downs.	15
improvement of security by by, you know you know,	14
we're pursuing here is and that's a continued	13
A that we face. And the efforts that we're	12
Q. Right.	12
bandits	10
two subsidiaries are the worst of the hackers and	9
that what's happening here is and that's that ADP's	Φ
A. Yes. And I think it's important to point out	7
MS. GULLEY: Form.	0
disruption of data access." Do you see that?	σ
transition to a 'protected program' to prevent future	4
extend our collaborative approach to helping OEMs	ω
look, "Reynolds & Reynolds and DMI will formalize and	N
permission to talk about is for OEMs if you will	Н
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	1
MS. GUILEY: Objection: form	Л
manufacturers. They're parties, right?	24
Parties." Non-OEM third parties would be non-car	23
Q. (By Mr. Nemelka) So No. 2. "Non-OEM Third	22
MR. NEMELKA: Okay.	21
improper.	20
MS. GULLEY: and to the instruction as	19
MR. NEMELKA: That's fine.	18
to the sidebar	17
MS. GULLEY: I object to the form and	16
time here.	15
whole thing really does eat up time of our limited	14
whole whole thing. Now you know, reading the	13
the sections, then I give you a chance to read the	12
sections. It's more efficient if I could point you to	1 1
to read the whole document, but I ask you about specific	10
why you're you know I'd give you the opportunity	9
Q. Well if I could just that's one reason	Φ
run-on paragraph.	7
paragraph. That's a very that's kind of a long	Q
A. Yes. I'm I'm trying to reabsorb that	σ
Third Parties"?	4
Mr. Brockman, do you see No. 2, "Non-OEM	ω
you see that?	N
Q. (By Mr. Nemelka) "Non-OEM Third Parties." Do	Н
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you see that?	25
programs' becoming an exclusive offering by DMI." Do	24
Reynolds is "R&R is open to the R&R 'protected	23
"Exclusivity." Here there's a sentence that says,	22
Q. (By Mr. Nemelka) And then Point 4,	21
continue business as usual.	20
customers, not for Reynolds and DMI to, basically,	19
access for collection of data to go to specific	18
we were that that we were only going to allow	17
conversation, that they were brought to understand that	16
I I think that, probably after this first	15
A. This is this is what ADP was asking for, and	14
MS. GULLEY: Objection; form.	13
correct?	12
not just for OEMs, but for non-OEM third parties, too;	11
protected access to data that Reynolds' dealers have,	10
Q. (By Mr. Nemelka) So that DMI would have	9
A. Yes. I see that.	ω
MS. GULLEY: Objection; form.	7
that?	Q
existing and prospective non-OEM clients." Do you see	Л
launch a 'protected program' that DMI will offer to its	4
"R&R" Reynolds "and DMI will jointly create and	ω
Q. (By Mr. Nemelka) And it says here, R&I	Ν
A. Yes. That would be a proper characterization.	Н
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MS. GULLEY: Objecti A. Again, the this is How Jist. Q. (By Mr. Nemelka) You gav authority to pursue these discussi topics? MS. GULLEY: Objecti A. Yeah. And "discussions" everything that that is being r Gardner. From a background standp understand who Howard Gardner is. Howard Gardner's bab works, DMI. Again, one of the wor to have continue. But we have no to have continue. But we have no allowing that to continue to happe Q. (By Mr. Nemelka) One of allowing that to do with market messa messaging about data security, rig MS. GULLEY: Objecti ADP on had to do with market messa MS. GULLEY: Objecti	that that that's the case. Q. (By Mr. Nemelka) If you look	2 2
MS. GULLEY: Objection; for A. Again, the this is Howard Garlist. Q. (By Mr. Nemelka) You gave Mr. Sauthority to pursue these discussions, ritopics? MS. GULLEY: Objection; for A. Yeah. And "discussions" does not everything that that is being requeste Gardner. From a background standpoint, yunderstand who Howard Gardner is. Howard Gardner's baby is Diworks, DMI. Again, one of the worst hack out there's items in this list of things that to have continue. But we have no intentiallowing that to continue to happen. Q. (By Mr. Nemelka) One of the top gave Mr. Schaefer authority to pursue dispaye Mr. Schaefer authority, right? MS. GULLEY: Objection; for A. I disagree. I I don't	that that's the case.	2 1
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MS. GULLEY: Objection; A. Again, the this is Howard list. Q. (By Mr. Nemelka) You gave Mr authority to pursue these discussions, topics?	. GULLEY: Objection; f	7
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MS. GULLEY: Objection; A. Again, the this is Howard list. Q. (By Mr. Nemelka) You gave Mr	ty to pursue these discussions,	Л
MS. GULLEY: Objection; A. Again, the this is Howard	(By Mr. Nemelka) You gave Mr.	4
MS. GULLEY: Objection; A. Again, the this is Howard	Ω	ω
MS. GULLEY: Objection;	. Again, the this is Howard	N
	. GULLEY: Objection;	Н

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Mr. Schaefer to talk to CDK about that, right?	25
Q. (By Mr. Nemelka) And you authorized	24
Gardner's wish list.	23
A. That that was one of the items on Howard	22
MS. GULLEY: Objection; form.	21
market messaging on data security; correct?	20
Q. (By Mr. Nemelka) And one of those topics was	19
we were going to agree to.	18
general areas. It did not have anything to do with what	17
on a general basis. He could he could discuss these	16
A. The instructions that I gave to Mr. Schaefer is	15
the instruction.	14
MS. GULLEY: Objection to the question and	13
Mr. Schaefer, right? You saw that?	12
Q. (By Mr. Nemelka) You wrote that to	11
MS. GULLEY: Objection.	10
these subjects."	9
"You have authority to pursue discussions with ADP on	ω
email, Mr. Brockman. You just wrote to Mr. Schaefer,	7
Q. (By Mr. Nemelka) I'm simply reading your	Q
list.	Л
A. Again, this is this is Howard Gardner's wish	4
MS. GULLEY: Objection; form.	ω
you see that?	N
section here, "Market Messaging Data Security." Do	Н
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you holding Reynolds Reynolds wanted \circ 0 f μ. (By Ω Ω Н t 0 having having ц M_{Σ} . release security Nemelka) these these right? enhancements discussions Now, you can S D you're ფ ტ **t** with that that would CDK, having aside you were that

.SM GULLEY: Objection; form.

whi Ω ADP 0 But wanted ř, a 1 . Ch .led Ω Armageddon were customers did Tor t 0 There deploy much not were kind want would improved these מ 0 fi t o not series do situation, get Ļ; Ħ these thei 0f that what Ω К security ecurity т. where capabilit their would a11 enhancement enhancements contrac caus 0 \square Œ and sudden kind Ŋ

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enhancements .ndependent Ω that n T (Ву their integrators? M_{Σ} . were capabilities Nemelka) much improved NoA n T said uT blocking their that thes capabili this security access Уď

SIMGULLEY: Object ion; form

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you integrators know Again, the NoA characterization Hknow, μ. first Н you 0 0 mean Н Ť independent hackers take issue and bandit with

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11 10 9 \vdash ∞ 7 \circ И 4 ω \sim Case 3:20-cr-00371-WHA уев bandit Authenticom minor that, \circ \triangleright \tilde{o} that's right? for z97 (Ву (Ву rog what Mr. Mr. SIM S_{N} (Ву But your Nemelka) Nemelka) they're Mr. GULLEY: GULLEY: ПO Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL OWD Ф Nemelka) temporary products intended Form Mr. 0 S Objection; you Brockman, ₩e used basi already didn't do form Ω മ and you hacker you? established Page 72 of 459 very, used and Page very עם 72

14 with \vdash your used Authenticom NS. own products? GULLEY: 0 f the Objection; t o do and Ф specifi with form Ω process

the \circ (Ву knowledge M_{Σ} . Nemelka) dealer All right S S ano these knowledge security

enhancements that were much improved, much improved

.SM GULLEY: Objection; form

 \triangleright Πn their ability to detect unauthorized อธุก

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meaning Ю· λq (Ву integrators Mr. Nemelka) t O acce Unauthorized S dealer use dat 0 Н the

. Sĭ GULLEY: Objection; form

talking about What we're you know, talking very, about very μ. Ω high-level, and that's you we. $\mathcal{F}_{\mathcal{C}}$

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there were a number of them.	N И
security enhancements that we had prepared. Certainly,	24
A. Again, I don't know that it was all the	23
MS. GULLEY: Objection; form.	22
with CDK; correct?	21
release of security enhancements during the negotiations	20
Q. (By Mr. Nemelka) Reynolds held up on a large	19
distribution of software enhancements.	18
weren't it's not a simultaneous, you know,	17
them we turned loose earlier than others. They	16
we call "fixes" or "enhancements," and probably some of	<u>1</u>
You know, there there's a series of what	14
not a single thing.	13
necessarily released all at once. They're they're	12
that it's it's clear that the enhancements are not	H H
we released the those enhancements I might add	10
A. The exact timing of of that, you know, when	9
MS. GULLEY: Objection; form.	Φ
right?	7
those until you concluded your negotiations with CDK,	თ
Q. (By Mr. Nemelka) And you held off on releasing	И
unauthorized. That's what we're talking about.	4
nothing about. They're, you know, completely	ω
coming into the the system that who we know	N
know, software enhancements to detect, you know, people	Н
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block the kind of access that that they they had	25
security enhancements that would would basically	24
important point of of a call, that we had a number of	23
A. Yes. I I see that. And that was a very	N N
worked out." Do you see that?	21
for over 2 months to see if there was a deal to be	20
have held up on a large release of security enhancements	19
back, if you turn over to the second page, is that "We	18
Q. And one thing that you told him at the very	17
want to make in a conversation with Steve Anenen.	16
"talking paper." It is a a series of points that I	7
A. This is a what I would refer to as a	14
Q. And you prepared these notes sorry.	13
A. Yes.	12
Q. Mr. Brockman, these are your notes; correct?	11
A. Oh, okay.	10
to review it. There's a back page as well.	9
And it's dated June 23rd, 2014. I'll give you a chance	Φ
the metadata as produced says this came from your file.	7
represent to you that your counsel produced this. And	σ
Q. (By Mr. Nemelka) And, Mr. Brockman, I'll	UΊ
identification.)	4
(Exhibit 642 was marked for	ω
Plaintiff's Exhibit 642.	N
Q. (By Mr. Nemelka) I'm going to hand you	Ъ
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20 24 22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash you were things going that that things Int security been Integra some There system, ealers egra and know says using Ю· cases \circ \triangleright \circ you t 0 Ω tha that happening Link! **∀** (D ou Link!, that were From enhancement would block Yes And (Ву That's (ву who Ċ what know, have t 0 the Ω μ. Mr. Mr. you were hacking \Box they get they and that NS. SIMSMmight but T. no ADP ць they're when where had Nemelka) Nemelka) into providing Authenticom, what GULLEY: GULLEY: GULLEY: idea are don' they interesting other In subsidiaries been into uncover you ano the \vdash people some when who would hacking have integrators; say ano holding block, Reynolds noA And systems Objection; Objection; Object they them they cases people give "providing systems are മ issue understand μ. their \Box signature are that were come ion; SPM not and that breaking them that dealer that in most doing form way n. just the form that form access correct ;dn When would Ф that **∀**0 ST for g Reynolds n T into DMI would Wе would e K had ¥ ⊕ cases everything just acce DMI And and correct COVE and Ω H on dо we. and to idea Ω know the μ. ge R R Ω

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 \circ О 4 ω \sim \vdash in, permitted. ano Ω somewhat contracts lау, software which you cavalier know, ა ე Our Unfortunately, completely other no contracts about authorized Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL than following employees contrary with dealers -1 our or, to that are, you dealers no the particular อธก know you terms speci 0 know Ř μ. acce Οf Ω .fj Page their Ω cally term Ŋ to 76

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that access data; \tilde{o} correct O S those (Ву that Mr. user they Nemelka) IDs could t o bе And they used granted and to access they that gran the Ċ dealer Œ à \Box hat

SIMGULLEY: Object ion; form

You But reporting this know, დ Ի-That' the tools for Ω dealer remote where effectively what has, they unattended you could know, do access very that what powerful would themselves happen

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that, Ω he econd μ. SZ very page? \Box page about point much (Ву Midway, midway ი ე $\mathbb{Z}_{\mathbb{N}}$ മ You personal very have Nemelka halfway, through much one let's മ the All μ. = personal \Box go right Do says, you down t 0 "The one." where 0 0 0 Let second down that? you Ω Do go noA say, through to point 3 0 0 \Box "The he

19

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 \triangleright

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been extracting \tilde{o} Okay Right data out under 0 f there Reynolds you systems say, "ADP for has over

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim Ω have data approach marketplace the wrongly have right? providing think decade .nside al Sabo espeople millions the nonpublic direct security \circ \triangleright \circ \tilde{o} \bowtie that' Of **∀**0 taken and ADP' How Yes, issue That And Yes (Ву the Do that Ø think, п knowledge was s Mr. you Ω you what' rno would Reynolds advantage μ. .SM ADP \vdash SIthe 0 f personal posture Ω data \mathbf{H} do Do knew დ Ф Ф CDK that' do necessary Nemelka) data . Մ-GULLEY: GULLEY: Ω from you say issue ano required \Box taking the 0 that 0 f Ø that n. Ω (D (D that മ system, security 0 f Уm മ information right 0 fi that host 1 the sales you And ADP because Objection; Reynolds Objection; that? assumption we ' advantage data γу marketplace 0 R R way that know, then Sew Н standpoint security? other taking n T 0 that \Box you that n T 0 that H rno form do O Fi form the the the third has say, \vdash the manner belie things Reynolds SPM snq fact marketplace that cost their wrong parties \vdash iness ADP Н don' that that Sn exists n T has ₩e anc of **∀** (D n T the

taking advantage of Reynolds in the marketplace over the	N 5
Q. So you say it cost you the CDK wrongly	24
laws correctly.	23
I believe that they're not following those, you know,	22
Gramm-Leach-Bliley Act and also the Safeguards Rules	21
A. I believe that the what's required by	20
in violation of the law?	19
Q. (By Mr. Nemelka) Are you saying that they are	18
are different than ours.	17
A. I believe that they take views that are that	16
UNIDENTIFIED SPEAKER: Objection; form.	15
MS. GULLEY: Objection; form.	14
you do; correct?	13
besides Reynolds and CDK, do not take the same view that	12
Q. (By Mr. Nemelka) You know that other DMSs,	1 1
obviously hurt.	10
them to decide to switch their business to ADP, that's	9
right way, the way that's required by law, you know, for	ω
customer over data security when we're doing things the	7
A. That that is correct. And to to lose a	Q
MS. GULLEY: Objection; form.	Л
millions because you lost DMS customers as a result?	4
Q. (By Mr. Nemelka) And it cost you in the	ω
believed that that was harmful to us in the marketplace.	N
position on the data security standpoint. And we	Н
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19 20 24 22 21 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim Ω 0 improved working h T personally And necessarily mil lost μthink years know, Power excess know, igure ituation Ť К ssue doing lions S tated **∀**0 ļ t 0 DMS tha ago 0 f came with system 0 f out data μ. figure to do Ω data μ. Ċ from when Н customers me n T T besides have with aboard ADP would another improve рф security. you that n T specifically years. security And you SIMThe Τt just out Tor Houston, our been, have say Ω a t it' the know, software losing GULLEY: our new Ф Ф still the ability way Any Reynolds Ω very, that first And this you t 0 hackers way very dat And cost loss more, not DMS t O understand, μ. other know, the ָש Ω and from that very, Objection; much you t 0 block security. extremely, 0 f perfect, customers wa s figure you and you know, ₩ (0 way acquire millions the Н bitter customers, very that Ф Reynolds one figure μ. know, helped cat tha d time we've out 0 f long †- form because ĊŢ. -and-mous And you new And competitors inventive firs μ. the out Ф that wouldn't because \Box create, new μ. know, time, † † been custome cost then ¥ (D \Box \Box things മ would people μ. Ι, arrived way way Ω they Reynolds the you Page vastly strong ways been and to also tha you 12 79

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim W e ou 0 Ω ST "di indi years service, access systems block ike ert hat Η̈́ <u>ن</u> pplications, Therefore Ċ used fferenc that מ charge .cat ified that DMI that \circ product \tilde{o} but ADP for \square type Ω Н SPA and Well that S O R \Box There (Ву (ву λq the †. access \mathbb{O} not the strictly = ນ the H $\mathbb{N}_{\mathbb{N}}$ 0 f ADP $\mathbb{M}_{\mathbb{K}}$. from And മ takes Integra цb for SMwant" SMlevel UNIDENTIFIED t 0 μ. d i Reynolds \Box access next you ADP into Nemelka μ. fference Nemelka) extract , sn says GULLEY: instance, \Box HGULLEY: to That for μ. think 0 know, dealership, Link! Ω Н \sim 1 and dо the 0 speci t 0 <u>ф</u> = H "no-charge **∀** (D applications years ע Н reminder this data this **%**⊕ product ADP Н want point Now, would ი ე SPEAKER: Objection; erences Objection; like fic right? would • you system CDK particular for മ n T you Ω basically SO they would no-char reminder that access." wanted cards 0 have dealer that Ť between other You you say t 0 for contention Objection; form form **∑** made get .ge wanted аt specifi the \mathbb{N} third Q cards passage 0 0 þ ¥ ⊕ acc the \vdash like free gus Н Tha Ċ G G next tha have S D \mathbb{O} ed, partie Ċ \Box Ω Н between form. Ċ R B correc Ω year long the Page means to cle \mathbb{N} t o like And ADP Ø 80 മ

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MS. GULLEY: Objection; form.	25
into the business like DMI and Integra Link!?	24
Mr. Anenen that you had no intention of ever entering	23
Q. (By Mr. Nemelka) And here did you tell	22
hardships for what is our mutual customers.	21
orderly stand-down transition, to avoid creating	20
Our our whole discussion with ADP was about an	19
A. No. That's not true. That that's not true.	18
MS. GULLEY: Objection; form.	17
Correct?	16
venture with CDK on that, though, as we saw earlier.	15
Q. You were considering entering into a joint	14
A. We don't do that.	13
Link! did?	12
Q. (By Mr. Nemelka) Like DMI and Integra	11
reselling. We don't do that.	10
from other dealership systems for the purposes of	9
intention of being in the process of extracting data	ω
A. We are not never have been and have no	7
MS. GULLEY: Objection; form.	Q
for other 3rd parties"?	Л
you told him here that "not to be used to extract data	4
Q. (By Mr. Nemelka) And what did you mean when	ω
years.	N
service reminders, that we would have free access for 20	Н
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from you to Mr. Anenen, dated June 30, 2014, right?	<u>р</u>
Q. All right. So this starts off with an email	24
it. Yes, I've read it. Can you repeat your question?	23
A. Just just a moment. Let me let me read	22
Mr. Brockman?	2
email from you on June 30th, to Mr. Anenen; correct?	20
Q. (By Mr. Nemelka) Right. It starts off with an	19
MS. GULLEY: It starts on the back.	18
I'll give you a chance to to review it.	17
Q. And this is an email to you, July 2nd, 2014.	16
A. That's correct.	15
is CDK's CEO, right?	14
give you a chance to read it. But again, Steve Anenen	13
from Steve Anenen to you, dated July 2nd, 2015. I'll	12
Q. (By Mr. Nemelka) The top email is an email	1 1
identification.)	10
(Exhibit 643 was marked for	9
Exhibit 643.	ω
Q. (By Mr. Nemelka) I've handed you Plaintiff's	7
ADP.	σ
relationship to the access that we would be granted by	UΊ
other 3rd parties." So that comment was directly in	4
service reminders not to be used to extract data for	ω
of that. I think it's pretty clear, it says, "like	N
A. I don't think I made a a general statement	Н
Page 82	
	-

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employing delay tactics. And I'm impatient to get this	24
happening is and that's that Steve Anenen is	Νω
A. That's the date of this email. What's	22
MS. GULLEY: Objection; form.	21
projects since June 30th, 2014, right?	20
Q. You're still delaying the the data security	19
A. Yes. That's what it says.	18
Right?	17
security projects have been delayed another week."	16
Q. Right. You write here at the end, "My data	15
A. More than a little impatient.	14
Q. Right.	13
impatient.	12
tell by the tone of this email, I'm getting a little	11
A. Yes. That that's correct. And as you can	10
MS. GULLEY: Objection; form.	9
that we just just looked at; correct?	œ
talking points for that conversation is the document	7
Q. (By Mr. Nemelka) And those were the the	0
A. Yes. That is correct.	И
MS. GULLEY: Form.	4
with him; correct?	ω
Q. And this follows up a conversation that you had	N
A. That's correct.	Н
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situation

of,

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anything but this one email but this one paragraph.	Ю (Л
MR. NEMELKA: I'm not going to ask about	24
read this first page.	23
MS. GULLEY: I don't I don't think he	22
go to his email.	21
Mr. Anenen says to that statement in particular, if you	20
Q. And then I want to ask you about what	19
you know, what data that we we get and nothing else.	18
A where it's clearly spelled out by contract,	17
Q. (By Mr. Nemelka) Right.	16
certified interface process	15
we might offer to the marketplace. But still under the	14
A. It is for other software products that that	13
MS. GULLEY: Objection; form.	12
reminders, right?	11
for free access is more than just for maintenance	10
accessed your systems for a long time, your request here	9
So you here, you're saying, because CDK	Φ
maintenance reminders both in content and duration."	7
request is for more than just data access than for	Q
has accessed our systems for a couple of decades, my	И
still your email, Mr. Brockman. "However given that ADP	4
Q. (By Mr. Nemelka) And you write to him, also	ω
be over.	N
as far as our system is concerned. It's time for it to	Ь
Page 84	

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to read them. If they are longer documents, I think	N И
points in a in a document. I'm giving him a chance	24
here. I think it's fair to direct him to particular	23
state for the record, we've been given limited time,	22
MR. NEMELKA: While he's reading, I'll just	21
well.	20
MS. GULLEY: I object to that comment as	19
I will let him read this email.	18
obstructionist, then we'll do it document by document.	17
MR. NEMELKA: If it's going to be	16
are.	15
represented. I just want to know what the ground rules	14
the case in depositions of the witnesses that you	13
document, the witness can, right? That's certainly been	12
the procedure is that if the witness wants to read the	11
MR. RYAN: So my my complaint is that	10
MR. NEMELKA: Okay.	9
email, please.	∞
THE WITNESS: I would like to read the	7
MS. GULLEY: I object to that.	σ
in response to that statement.	Л
you to this one one paragraph that Mr. Anenen writes	4
MR. NEMELKA: Okay. I just want to point	ω
MS. GULLEY: I object to that.	N
Q. (By Mr. Nemelka) He says	Н
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reading. The amount of conversation that's been going	<u>р</u>
THE WITNESS: Excuse me. I didn't finish	24
like to ask you about	23
Q. (By Mr. Nemelka) All right, Mr. Brockman, I'd	22
appropriate, Andi, but I'll get back to questioning.	21
MR. NEMELKA: You've gone beyond what's	20
more than four years ago.	19
allowed to read those statements, given that they were	18
on statements by Mr. Anenen he should at least be	17
like to read the document you're asking him to opine	16
And if Mr. Brockman suggests that he would	15
you instructed your clients, repeatedly, on the record.	14
this this the desire to read documents is one that	13
record. Everyone has the same amount of time, and	12
allowed counsel to use the time that they have on the	1 1
partner, Mr. Ho, has defended, in which he hasn't even	10
depositions that you have defended and that your	9
I also ask direct you to look into the	∞
completely object to your statement.	7
the record like the one that you just made. I	0
opposing counsel inappropriate for making statements on	ហ
MS. GULLEY: Mr. Nemelka, you have called	4
parts of the document, you're free to.	ω
If you want to take your time and ask him about other	22
it's fair for us to direct him, for efficiency purposes.	Н
Page 86	

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MS. GULLEY: Form.	ω
through an acquisition." Do you see that?	20
said. Our businesses that access R&R systems came to us	10
have not been 'accessing R&R systems for decades' as you	0
his bullet points, he said, "I should point out that we	9
Q. And he wrote to you in the paragraph after	ω,
A. I do.	.7
2014. Do you have that in front of you?	9
email that you received from Mr. Anenen on July 2nd,	'n
Q. Mr. Brockman, I'd like to point you to the	4
BY MR. NEMELKA:	ω
EXAMINATION (Continuing)	2
record.	
Media 2. The time is 11:50 a.m. We are back on the	0
THE VIDEOGRAPHER: This is the beginning of	9
(Short recess 11:37 to 11:50 a.m.)	∞
We are off the record.	7
THE VIDEOGRAPHER: The time is 11:37 a.m.	Q
has been disconnected. Can we go off the record?	σ
minute? Mr. Wallner has informed us the phone is not	4
MS. WEDGWORTH: Can we go off the record a	ω
MR. NEMELKA: Okay.	N
on across the table, I haven't had a chance to read.	\vdash
Page 87	

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Nemelka)

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Yes,

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19 2 24 22 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash doing $\mathbb{Z}_{\mathbb{N}}$ you you pointing Нdisagre Reynolds ADP R&R Ω through doesn't Link! company system remiss Eirst \Box S and \square only Brockman know, know, Authenticom? \triangleright \circ are controlling sentence 0.03 becomes ou Ō through and Ф count with SPM out Well for Ť within Yes (Ву bas the organizations contract pointing you make Mr. quite that accessing ically history uT NS. SMpart VМ മ there Ω \mathbf{H} the \mathbf{H} Ħ $^{\rm M}_{\rm M}$ Nemelka) contract Н dat question was: R&R GULLEY: GULLEY: believe with believe some 0f out say las <u>1</u>: are Ħ Anenen Ф 0 f ა ე this your the S D D († they Authenticom? part that time that concur that some access several Cess Ļt with that That ADP Objection; Objection; history. paragraph, correct does because 0 f without R&R acquired, things has company with ing Authenticom, system your when wasn't years ი ე S H become count tha he h T tha accessing DMI you that an organization, through form form ĊŢ. And kind you correct starting that \Box agreement CDK acquire and Ф Hfor question, Н know, 0f priority would sys and comma tha Integra goes him മ the with has contract that р Page t O from ADP that with for been the that ∞

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MS. GULLEY: Objection; form.	25
right?	24
Q. (By Mr. Nemelka) Right. Naked Line Marketing,	23
the the ad agency.	22
A. I think that they started to do some work for	21
MS. GULLEY: Objection; form.	20
more than just those reminders, right?	19
Q. (By Mr. Nemelka) Reynolds used Authenticom for	18
application that's sensitive.	17
information. It again, it is it's not an	16
nonpublic personal information. There's no accounting	7
A. For reminder cards, you know, there's no	14
MS. GULLEY: Objection; form.	13
Authenticom if they were insecure, would you have?	12
Q. (By Mr. Nemelka) You wouldn't have used	11
endeavoring to dodge around.	10
or at least kind of heated on my part and that he's	9
negotiation a pretty heated negotiation, frankly	ω
he's doing is and that's, you know, this this is a	7
reminder cards, is is min minuscule. And what	Q
information from CDK's systems, specifically around	σ
whereas the the agreement with Authenticom for	4
hacking our systems has been on on a giant scale,	ω
going on what ADP has been doing as far as, you know,	N
however, there is an issue of degree here. What's been	Н
Page 89	
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DO::::::::::::::::::::::::::::::::::::	ر ر
Q. (By Mr. Nemelka) It's cost-effective for	23
whether it's reliable or not.	22
business. It's I'm not in in a position to say	21
A. And I'm not involved in in that part of our	20
MS. GULLEY: Objection; form.	19
service; correct?	18
Q. (By Mr. Nemelka) They provided a reliable	17
A. Not that I'm aware of.	16
MS. GULLEY: Objection; form.	15
breaches that they've had, right?	14
Q. (By Mr. Nemelka) You're not aware of any data	13
procedures.	12
inquiry made with regards to their internal security	11
A. As far as I know, there's been there was no	10
MS. GULLEY: Objection; form.	9
used Authenticom if they were insecure, right?	ω
Q. (By Mr. Nemelka) Again, you would not have	7
been extremely minor.	თ
A. Again, the usage of that usage is has	И
MS. GULLEY: Objection; form.	4
get information on customers; correct?	ω
Q. And Naked Line does have information does	Ν
A. Yes. That's the name of our ad agency.	Н
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Reynolds

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use Authenticom,

right?

MS.

GULLEY:

Objection;

form.

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	Page 91
'	A. Again, I'm I'm not sufficiently involved in
	that part of the business to be able to comment on
	Q. (By Mr. Nemelka) And then he writes at the
	of that paragraph, "We need to clean this up as well."
	And you understood that to mean that Reynolds needed
	stop using Authenticom, right?

MS. GULLEY: Object ion; form.

- g kind that 0 f down (Ву Frankly, g $\mathbb{M}_{\mathbb{K}}$. at that the Nemelka) Н sentence end don't 0 f recall What the It' whole do that Ω you understand him മ thing. little I've ever short And focused one
- mean Λq saying, NS. "We GULLEY: need t 0 Objection; clean this form. ďn S D well"? Please let t O

him finish his answers

- the and ttention next frankly, to-the-last Ιt t O გ ე that when Ήt you Н paragraph. received ი ე know, not clear litt this <u>l</u>e t 0 short Н me didn't what sentence pay much that means
- CDK, t 0 gtop right? \tilde{o} using (Ву Mr. Authenticom Nemelka) S D Reynolds part 0 fi ultimately z T T S agreements did agree with

SIMGULLEY: Objection; form

Ω Authenticom. tand-down agreement, Whether know that 나 I'm Spw not part that sure 0 f ₩ (D the stopped 0 f using the

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Q. (By Mr. Nemelka) All right. I don't intend	Ŋ 5
essentially, take things out of context.	24
little more time on it than that. I I hesitate	23
document. I think I would prefer to, you know, spend	22
A. Well, I think that this this is a big	21
MS. GULLEY: Objection.	20
you to the section on "Security," on the next page	19
Q. (By Mr. Nemelka) Okay. If I could just point	18
and we discuss a number of issues of general intere	17
annual meeting of sales you know vice-president	16
A. The context of this is and that's we have	7
MS. GULLEY: Form.	14
your notes for a state of the union meeting?	13
notes. So do you do you recognize these as your	12
So it's a multipage state of the union	<u> </u>
sections.	10
Union." And I'm only going to ask you about two	9
the file name was "Aspen Meeting 2014 State of the	ω
custodial files, with a date of July 14th, 2014.	7
that this was produced to us by your counsel from	Q
Q. (By Mr. Nemelka) And I will represent to	σ
identification.)	4
(Exhibit 644 was marked for	ω
exhibit marked Plaintiff's Exhibit 644.	N
(By Mr. Nemelka) I've handed you an	\vdash
Page	

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim you you do Q pointing X S B are covered thes taking then that about . О Ω that lsion need you about related long try Ю· address? most S D anything maybe Ф the then you your മ t o t O let's (Ву These number the document Ω Of. think 0f questions review t O I'11 Mr. \vdash SIMR. SISIMsections i t \vdash what go you were, out the guess, t 0 0 f your Nemelka) give just off NEMELKA: GULLEY: GULLEY: GULLEY: the know, make t 0 security 0f issues you And the g speaking do, you rest do can п context make security, know, \vdash Ήt security. record the 0 f Objection; I'11 Form Hdon't Objection. HAll 0 f t 0 procedure need section? this just this interest make notes chance μ. talking right \Box I'm intend way. t 0 ask X t 0 maybe mor and цb just read answer But Tor you, form Ó intelligent points Wе Wel Ф Do g But Щ that ijf i t going you lot Я В Н you $\dot{\vdash}$ firs asking i f them you Ø cient \mathbf{H} first Ω while feel 0 could Н recognize taying f which t 0 know, Page 0 could ask like just you 93 O'D μ. (T

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the record.	25
MS. GULLEY: Okay. Thanks. Let's go off	24
MR. RYAN: There is no question.	23
There is not a question pending.	22
right now? So we can go off the record? There is not.	21
MS. GULLEY: Is there a question pending	20
information. You know	19
THE WITNESS: This is very, very sensitive	18
privilege potential privilege?	17
MS. GULLEY: Does it relate to a matter of	16
MR. NEMELKA: Okay.	15
attorney about this document.	14
THE WITNESS: I'd like to speak to my	13
MR. RYAN: I object as well.	12
MS. GULLEY: I object.	11
statement, Mr. Brockman, you can review the document.	10
speaking notes for for that meeting. And with that	9
recognized that he's acknowledged that these are	ω
wants to review the whole whole documents. He's	7
him for a few questions to make this efficient. But he	Q
to state for the record, I've asked him to only asked	Ы
that's going to be watching this. And I would just like	4
MR. NEMELKA: All right. We have a jury	ω
know, sort of goose/gander.	N
followed by Kellogg, so I'm just trying to make it, you	Ъ
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been marked "Attorneys' Eyes Only," that this entire deposition is "Attorneys' Eyes Only." In particular, to remind Mr. Ryan that executives within his company and all the parties are not to know about or be told about any of this document or the subject of this testimony. Thank you. EXAMINATION (Continuing) BY MR. NEMELKA: Q. Can I ask you some questions now, Mr. Brockman? Procedular of the section on "Security," A. Yes. Q. Okay. A. Yes. Use of the first page. Do you see that bottom-of-the-page
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been marked "Attorneys' Eyes Only," that this enti
document, we ask that I remited everyone that this
d) d) m o
8 order. And in light of the sensitive nature of this
7 break. Mr. Brockman had a question about the protective
6 MS. GULLEY: Thank you for that short
5 12:02 p.m.
THE VIDEOGRAPHER: Back on the record at
3 (Short recess 12:01 to 12:02 p.m.)
We're off the record.
THE VIDEOGRAPHER: The time is 12:01 p.m.
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Case 3:20-cr-00371-WHA tha \Box Д В ∞ Ф Ж τ Hwith want " ADP " t 0 Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL S D $^{\lambda}$ you and about CDK Н "has bulle approached Page 96 of 459 \Box point Page 9

Q. I want that start with about doing the negotiating as

dat ent מ ring access ∞ into O S D D μ. Ω ц Reynolds μ. \Box agreement CDK that system? with approached respec T Reynolds to S C about

MS. GULLEY: Form.

20 S O R person tha don' not one \Box you \Box one 0 t 0 know Н our actually know, \Box 0f ດ ໝ the hard people their came answer for talk, people talked about, me t 0 you t 0 that talked t 0 becaus know, one t 0 t 0 0 t 0 recall Н $\boldsymbol{\mathsf{H}}$ one SPA CDK. their 0 not exactly Н our people And the people whethe zţj how Н Ø

approached though, Ю you (Ву su" $\mathbb{M}_{\mathbb{K}}$ NS. you = meaning Nemelka GULLEY: seem t o CDK Form Αt indicate approached leas that thes Reynolds ADP \mathbb{O} has not Ω right?

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knowledge behind know, മ tha Ω S B R Н S D R D \Box \Box S D Ö that The what mУ, you statement, actually that know, ω wha hard HĊ and don' шļ knowledge frankly, \Box says, have but hard you \mathbf{H} don't you

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12 11 10 9 \vdash ∞ 7 \circ О 4 ω \sim Case 3:20-cr-00371-WHA and ADP question hacking probably fourth could very more are much \circ Ю put bullet Уd that here Certainly, (Ву (By the behind far n T Mr. goes Mr. .. Ծ Ի-NS. point, Ω the ecurity total, us." Nemelka) Nemelka) on, GULLEY: worst Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL Do you those "This they probably wars Do and, 3 9 9 two you equal That Form could And very 0 0 0 that matter entities the then wasn't much put everybody that? you amount you 0f the behind wrote Уm that write fact security question 0 else Ť Page 97 of 459 belong su. that dа here combined Page wars "This The 97

MS. GULLEY: Objection; form

- that sdus tantially Ø that, Yeah. you reduced What know, I'm the talking volume about 0 f hacking there would μ. . Ω эď and
- morning, hat security you \tilde{o} actually you (Ву wars." said Mr. Nemelka) do that Does this you did? never 0 refresh you used your earlier the recollection phras thi

MS. GULLEY: Objection; form

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Ω actually S Ō And have Well when used żt Hwrite μ. \Box once documents looks like will like that admit thi Ω. μ. that _ Н-Ω \Box Ω T'L **U**-ST lower

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20 24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω N цb μ. CDK complaining likely charge write, d right? policie g What a と looked more hat \Box ituations بر orderly had behalf the would Ø expensive Ι'm Ю \circ \circ μ. Ŋ 3rd what become continue "Since Ω Reynolds what saying No. (Ву with (Ву (Ву 0 f have where Ċ parties stand-down think that Η Mr. OEMs $\mathbb{Z}_{\mathbb{N}}$ $\mathbb{M}_{\mathbb{K}}$ had I'm Ħ SI¥ ⊕ respect apparent SIMΤt with Ф t 0 saying system wanted have a t they become Nemelka) SPM Ω. referring version Nemelka) their Nemelka) GULLEY: GULLEY: for have that മ this DMS ou agreement were to here t O that costs their apparent j. t the point 0 f idea SPM access Ηt ask from That The SPM A11 Objection; Objection access issue RCI, Sew ther not version from you: 0 right next n T Reynolds Н with пO Ó Ω also like just how gur SPA 3rd 0 f not time, μ. the \Box bull How ш-ADP Οf ADP ļ dealership \Box about customer refers you Ö going party about what form wasn CDK Hżt did . et than RCI the Ħ μ. did? Ω point no system, CDK's That' you vendors \Box going form t o CDK's ADP \Box done **∀** (D ked р talking systems know will you access but are that

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim being no, products marketplac to Q purposes access understanding CDK Д would there about <u>jett</u> art imited Since using Reynolds, SPM you 5uri . D Ю· SPA рe the **∑** (D into five \Box going know, Н being it 0 f 0 7 Ö That other \vdash (Ву have going wind-down \mathbb{O} 600 think being ADP μ. within their $\mathbb{M}_{\mathbb{K}}$. free Ω right? t o Ø MR .SM that And .SM And part ou products dealerships pecific dealership t o a t have Nemelka) that idea გ | GULLEY: Ф GULLEY: Уm version years actually, RYAN: one **∀**0 þе agreement. of that redistributor, question constantly, SPM were Ф their idea 0 fi 0 f the 0 charge point Objection; Н ano Οf how noA going agreement Objection; Reynolds customers, Objection; access in, that version that RCI Hknow, product ADP μ. \Box associa Ω. you $_{\mathbb{O}}^{\mathbb{V}}$ What you know, ano to SPM ıt ou but were How Ω was Ьф 0 f know, Н their orm you usage going offerings form would form not what ĊŢ. .ed did for able an However, als going write ou with RCI? \vdash rog would ooking building the you t O ended Ьe t 0 charge t 0 the charge that have ე. purposes know **∀**0 Page Ьe And back had \Box t 0 more RCI that 100 3rd

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 $\mathbb{M}_{\mathbb{K}}$ Brockman 0 Ьe ц Н end Ħ asking t 0 the you why, after wars, you say 1; Ω μ.

going the ADP connection? Ω going t 0 have their security own version 0 f you RCI? What \Box ĊŢ. Ω .

. SM GULLEY: Objection; form

μ. about Ω μ. Ω part Again, 0 fi Н what their the stand-down their own agreement version ш-0 f Ω RCI

agreement that vers ion bullet 0 f (Ву RCI, NoA point, Mr. right talk Nemelka) you don't about NoA third talk don't parties about talk the for about stand-down thei u.

.S⊠ GULLEY: Objection;

thinking Well about when again, Н Ι'm wrote trying this thing t 0 tell and you what what \mathbf{H} SPM HSPM

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20 24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim not Ω 0 fi charge Reynolds RCI. Reynolds" К know, rying pecifically, eading the talking \triangleright Ю· \circ \circ 0 \circ Ω t 0 other haracterizing third your In \vdash (Ву (Ву (Ву (ву (Ву (By communicate You're about parties $\mathbb{M}_{\mathbb{K}}$. Mr. Mr. Mr. Mr. Mr. words, vendors? "charge MS. MR NS. MS. that ĭS. SIn T don't Nemelka) Nemelka) Nemelka) Nemelka Nemelka) Nemelka) what that GULLEY: GULLEY: GULLEY: GULLEY: WITNESS GULLEY: talking RYAN: Н "charge Reynolds Ħ for 3rd think context talking Wait parties their about what ΛM $\mathbb{M}_{\mathbb{K}}$. Jus And And Objection; 9 Let You're Objection; Answer that 3rd Yeah ahead question თ თ for \Box CDK is him O S about version Brockman Н what wai parti HĦ I'm for മ what? not МŽ Ф believe just \Box third finish and question quest. CDK for their going form form talking Ф 0 f გ Ի- \Box want answer saying party ი ე least മ -1 RCI тţ that know question . On version going t 0 not Ω Ω about Ω question ш- \Box charge I'm, correct? O \vdash "charge talk Ξ You're รมุโ you a11

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16 20 24 22 21 19 28 17 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim first only d Hthe μ. know, with thei You're here interface third continue Reynolds ection? \Box Ħ the Ω g ĸ same going t 0 Ф \circ page **∑** (D parties costs first DMS the talking the way get t 0 What (Ву Well, and გ Իfj: from Reynolds Reynolds have from page rst Mr. beat HSIMMR. SIMhaving I'm NS. MR. SIi t you about want 3rd and the Nemelka) dn GULLEY: NEMELKA: GULLEY: referring GULLEY: looks GULLEY: NEMELKA: go t o That's applications something t 0 h T party that' issue on, ask like the рау than Mr. Ω not you 0 f $\mathbb{M}_{\mathbb{K}}$. vendors Ι'm A11 Objection; \vdash t 0 for I'm m Andi, make that marketplace ADP. Brockman, customers right what other Nemelka trying sorry. about do μ. മ Ω CDK \Box Reynolds-certified the n T looks മ you' E R ა ე Ф Are than this form \Box your S O Let more first 0 bullet going $\mathcal{F}_{\mathcal{O}}$ "We over Hcomplaining like you figure Ħ the We ' doing Ω will objections asking expensive that, page К Ф go referring point you t 0 the way "Security" Page out В to do likely know the \circ that 1. 103

13 12 11 10 9 \vdash ∞ 7 \circ О 4 ω N offering. RMS wanted for Are "Acquisitions" front need and the 0 t 0 ¥ ⊕ Н the record, t 0 him, (Ву ask В В quit massive $\mathbb{M}_{\mathbb{K}}$. O'D you Andi SIMMR. MR. . Sĭ 1 please the talking Nemelka) NEMELKA: GULLEY: about NEMELKA: since GULLEY: first financial you Ф about page sentence Under Thank Could read This The advantages DMS Οf document you ა ე the the you what systems here Exhibit identify section whole document where that 0 Н and document ano \circ you the Ω focus Page right write exhibit 104 ДO n T Н

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17 16 15 14 Ω Retail ervices Management о В Retail NS. And Уm GULLEY: Ser Management first გ Իquestion Object that System? ion; Reta μ. Ŋ form 111 Management "RMS" stands for

 \triangleright Retail Management System

t 0 Ö and this Mr. ა ე Nemelka) Ф speech Okay t o your And salespeople you said noA μ. Ω. need that

SIMGULLEY: Objection; form

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to quit 0 talking (Ву $\mathbb{Z}_{\mathbb{N}}$ about Nemelka) DMS systems And you and say focus they instead they need d D

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16 20 24 22 19 28 17 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash has you know, encouraging competitive you For consideration application 0 nothing Q applications syst RMS focus, everybody systems, surround communications jott Ť .ndicating) ttle request know, en been ems instance, service, What ins strange 0 much more are ano the under What ი ე the the steady tead, Ω did advantage ¥ ⊕ the them areas DMS, kind 0f advanced for ano a11 point NS. older The Hbut, long you have Н inance mean ц improvement That t 0 Ф 0 f **∀**0 whi of ი ე-GULLEY: docuPAD retail mean long the 0 the development applications dо where Ť Н Н уд the цD 02 can caught n T you mean, service accounting, μ. Ω retail traditional, Уď ი ც vehicle that Ω time softwar those do other management application know, it's suite under Form that dn to that and გ Ļproducts managemen And applications areas. O S \square μ. \mathbb{O} inventory, \Box and, been that Ω where active 0f To enhancement good payroll, **₩** the and bе system you applicat Н kind frankly, have and Ω know that And truth Ċ $_{\mathbb{Q}}^{\mathbb{Q}}$ have focused that' development know t 0 sys ano 0 that O W not considerable takes Ť factory parts, tem, that snoi been Ω there' n. where what imaging ike μ. the The _ focus Page sounds those under whi which into thi you DMS leve Ω 105 do

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14 13 12 11 10 9 ∞ 7 \circ И 4 ω \sim \vdash wri recognize $^{\rm M}$ \circ Exhibit the includes email Brockman, 015 central 0 t 0 \circ all ĭΖ I've from 45 ე ე (Ву Thank this But COre \vdash M_{Σ} . 0 f Anenen need got also Mr. the (Exhibi document? you identification.) the Nemelka) applications Ϊf to chain Schaefer Tor dated \Box other Ö you ļ a k k this \circ that I've starts recognize January applications you I've SPM t 0 დ Իexplanation got about Ron with Mou marked handed t o \circ Workman, January your read цb 2015 the Tor emai you that email where dot \Box 2015 SO dated Plaintiff' \vdash integrate from dо email January you "We you t 0 t 0

Reynolds same t 0 have nour held security DMS had off systems been enhancement മ holding a t series your 0f off request that major on? **∀** (D Mes security O S from are 2014 enhancements these the

MS. GULLEY: Objection; form.

involved $\mathtt{I}^{\, \mathsf{I}} \, \mathtt{m}$ don't sorry. I'm don't not know what Ф programmer speci fic ones are

still Ю· holding (ВУ Mr. off Nemelka) g security But enhancements, still Reynolds though,

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MS. GULLEY: Objection; form.

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given the documents these have we've been been pending looking at, Ф long right? time,

.Sĭ GULLEY: Form

you know, That's proces correct It's been Ф very frustrating

that you \circ are (Ву $\mathbb{M}_{\mathbb{K}}$. going Nemelka) t O release And the strike security that enhancements

.SW GULLEY: For the room, the lunch μ.

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MR. NEMELKA: want t 0 ask him about one

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(Exhibit 646 Sew marked

identification.

Mr. receiving Exhibit Brockman, 0 646 (Ву this $\mathbb{M}_{\mathbb{K}}$. which dated email Nemelka) გ Ի-January from пp email $^{\rm M}$ I've <u>|</u> Schaefer from Bob 2015 handed you Do Schaefer you Plaintiff recognize t 0 you, Ω

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 $215-241-1000 \sim 610-434-8588 \sim 302-571-0510 \sim 202-803-8830$ Veritext Legal Solutions

with you shortly. Q. (By Mr. Nemelka) Okay. A. Okay. here that he references. First of all, do you recall getting this email from Mr. Schaefer, Mr. Brockman? A. Yes. O. And the an issue and it's about the continuing negotiations between CDK and Reynolds;
continuing negotiations between CDK and Reynold
12 correct?
COTTECT? MS. GULLEY: A. Yes. Q. (By Mr. Nemelka) I've identified is I'm q
MS. GULLEY: Form. A. Yes. Q. (By Mr. Nemelka) And an issue that I I've identified is I'm quoting "CDK committi NEVER accessing the Reynolds DMS again." Do you s that at the bottom of the first page? MS. GULLEY: Form.
MS. GULLEY: Form. A. Yes. Q. (By Mr. Nemelka) And an issue that I I've identified is I'm quoting "CDK committi NEVER accessing the Reynolds DMS again." Do you s that at the bottom of the first page? MS. GULLEY: Form. Q. (By Mr. Nemelka) At bottom of the first the very last line.

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(By Mr.

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19 20 24 22 21 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim you whole wanted, meaning that you current system about what orever. լ ՄՏ, about \Box 0 fir the \circ \triangleright \triangleright O \tilde{o} want have the again access Reynolds state μ. C S μ. reply Ω Yes Ω I've That (Ву That's (Ву (Ву next that that thi Toz t 0 Do paragraph Mr. пO Κ $\mathbb{N}_{\mathbb{N}}$ 0 f you not ū .Sĭ the . Sĭ .SM agree SIMwas s issue page, CDK behalf wind-down certainly the Nemelka) Nemelka) that Nemelka) 0 0 0 GULLEY: GULLEY: GULLEY: been GULLEY: system 1 t 0 and t O "have dn Mr. negotiation SPM that agree Of the Hinvolved Second-to top, on D want Уm period, any what added And Form Form And Objection; What forever, Objection; what behalf t 0 understanding he third t 0 CDK **∀** (D never that's ZΜ മ Ω SPM Mr. lfter ays, las ask Ċ but wanted said, thi 0 party, right? Н \Box Schaefer for access Schaefer you, form after Ω any the "We what form sentence leve five to a t Mr. have ω grd right Reynold the Ë happen that years least And explains 0 years party writes Brockman, 0 Ť added" Page Reynolds thi detail **₩**0 they to t 0

MR. NEMELKA: All right. Let's pull it	25
don't believe it says that.	24
A. I would want to go look at that document, but I	23
improper.	22
MS. GULLEY: Objection; form. This is	21
system, right?	20
correct, that CDK agreed to never access the Reynolds	19
Q. (By Mr. Nemelka) In fact, it is forever,	18
question asking my question.	17
MR. NEMELKA: Let me finish answering my	16
MS. GULLEY: Objection	15
agreement, it is forever, right?	14
Q. (By Mr. Nemelka) And in fact, in the wind-down	13
all about.	12
A. That's my understanding. That's what this is	11
MS. GULLEY: Objection; form.	10
was the answer?	9
Q. (By Mr. Nemelka) Right? What was that what	Φ
MS. GULLEY: Objection; form.	7
to keep that to five years, right?	0
on forever never accessing. And CDK, at least, wanted	σ
Q. (By Mr. Nemelka) Okay. Reynolds was insisting	4
we asked for and and they're they're not agreeing.	ω
the stand-down agreement consists of. And I know what	N
in this negotiation, which is basically formalizing what	Ъ
Page 110	

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24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash you did $\mathbb{Z}_{\mathbb{N}}$ ВÖ negotiated Ω Ω behal agreement out Plainti ign tand-down Page going know not Brockman, \Box 0 Ю Н them? \circ \triangleright \triangleright \boxtimes 0 0 Щ Н read Н Ħ. Umm, And all, Yes That's Dated (Ву Yes, (Ву t O this Reynolds? between Ω had g аt Exhibit $\mathbb{M}_{\mathbb{K}}$. do Mr. do this your Page 1. you .Sĭ \vdash length SI(Exhibi particular February ი ე you did correct Nemelka) Nemelka) depends. one GULLEY: CDK had GULLEY: signed point 11 signature typically 647, \Box and extensively. 0 f been, And 647 100 this you 13 which Reynolds issue this $\mathbb{M}_{\mathbb{K}}$. marked ц Objection; Objection; OS you \sim t 0 015 there? this read agreement, 11 le μ. Brockman, where know, had one, \Box Ω 0f for Ω the particular contracts go Н And ω Hyou form form data felt worked identi SPM оζ, there. do the \vdash right, 'Ve you you ready that exchange Н first you Эd case, handed cation. fore 0 0 0 This know, Page the t 0 thing that გ ეget you H111 you മ

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2 24 23 22 21 20 19 28 17 16 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash know, such not Д integrate that party' paragraph, t o Transfer signed could 'Each υ go t o knowledge ∞ Ю Ю get what ask X Ω Ω party 0 And \Box sell ; T T T Н DMS written reasonably Yes, and Reynolds (Ву (Ву (Ву (Ву with g for the CDK did CDK 9 any M_{Σ} . Mr. with Mr. DMS Σ transfer, any MS. . Sĭ Section SIHSIand not the wanted, regarding take consent. technology, Nemelka) Nemelka) Nemelka) መ መ Access. Nemelka) and GULLEY: GULLEY: the further GULLEY: GULLEY: read other believes Reynolds any that 4. CDK next just 20 other Ы = μ. integration party's paragraph \Box assign changes further დ Ի-Form. Form All Do projec Do Let's Form Did Form. Okay. agreed business t o t o "Prohibi Hyou steps you right have you ge DMS look to \Box 3 0 0 0 0 0 0 and 0 S covenant Ht 0 read μ. plans t 0 any \Box with tion. le. without process a t off t 0 two that? that? ន្តន And \Box \vdash affi thi the agree Ω skimmed the gon the things \Box Ω Ω. n. Ω . Ω 0 \vdash \Box μ. £i before other acces Knowledge any ate. В thi t o table other rst Page agree other Ω Section person you O S 0 112 H

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A. Yes, I see that. And that		ocument (HIGHLY
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very	Page 113	13 of 4!
	13	59

20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 ∞ 7 \circ О 4 ω \sim SPM the S O R and to Ω that las answering important other require, done there tand-down, technology avoidance that's Ω answering \circ dealership \circ question? \circ with that that was: Уm Okay. you (ву (By (Ву the provis **₩** we're CDK? pending you know, S D right know, Mr. $\mathbb{M}_{\mathbb{K}}$. ĭr. Did will last that NS. NS. SIM0 f HHH the മ system. What you see Nemelka) result Nemelka) Nemelka) doubt, GULLEY: GULLEY: GULLEY: WITNESS: not question knowledge last question? enables we're And that turn 0 fi this question what's that? And then jointly ΛM somebody the, And What Objection; Objection .. გ Woul loose Ħ 0 f O S Section the question to а С sorry. what how you did Q You said, What before accomplish next work any agreeing you and t 0 access you know, we ' 4 pleas kind did form. what here გ Ļdo Were О sentence Re that agree you that Ω "Yes." doing 0 f with Œ that, you not ი ე Ω He repea gained agree t 0 was finished intended ū ი Land S S Ċ would not the to МY For

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim seeing not We' into 0 parties knowledge, contractual protection contractual Ф look, they're about that' agreed intended Ť Ω ū not this മ going that ours, Ω ∞ going you how covenant that that intended to, tУ going agreement Ω t 0 К Well, (Ву know, t O t 0 0 okay? 0 f that okay? fourth right? Н here. t 0 protect $\mathbb{S} \oplus \mathbb{N}$ restriction $\mathbb{M}_{\mathbb{K}}$. get you share, the t o NS. And intellectual not compete okay. triction this თ თ get Nemelka) know, Reynolds O S parties, what We ' 1 GULLEY: What you t O you how the mУ some გ Իც ც covenant compete, I'm we're know, ₩0 • 0 f agreeing question operational an t 0 0 f know, But not \mathcal{F}_{Θ} DMS knowledge Now, you get property. what Objection; acces ΙP access we're going what' further not and the protection know, into but Ω Ω not .. ი. I'm t o the and Ω intended tha ΗP not t O snf ano and rather about happening not t 0 മ t o compete, ĊŢ. saying gain form ū CDK attempted Τt going CDK \Box disseminate dat മ other systems provision Sew how DMS result here knowledge and മ מ ი ე I'm t 0 security you t 0 and മ μ. third Ω document Reynolds ը Մд С 0f and get know. S 0 0 ₩ (D tha and Ηt ĊŢ.

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question.	25
MR. NEMELKA: Let let me finish my	24
A "and DMS Access."	23
MS. GULLEY: Objection; form.	22
Q. Finish reading the the	21
it's "Provision on Knowledge Transfer"	20
A. But but if you look at the heading for 4.5,	19
MS. GULLEY: Objection; form.	18
attempted access." Correct?	17
Q "contractual restriction of access and	16
A. It was	15
Q. (By Mr. Nemelka) Mr. Brockman, it says	14
how to access.	13
restriction of the not to disseminate knowledge about	12
A. It is not restriction of access. It's	11
MS. GULLEY: Objection; form.	10
restriction of access that we're looking at here in 4.5?	9
Q. (By Mr. Nemelka) So what is this contractual	Φ
it into the final agreement, I don't believe.	7
A. There there that provision did not make	Q
MR. RYAN: Do you have an exhibit number?	U
MS. GULLEY: Objection; form.	4
Reynolds DMS again, right?	ω
that Reynolds wanted CDK to agree to never access the	N
where Mr. Schaefer said to you that and you testified	Ъ
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MS. GULLEY: Objection; form. Just give me	entire title of 4.5, Mr. Brockman.	Q. (By Mr. Nemelka) Please finish reading the	Page 116	Case 3:20-cr-003/1-wha Document 69-20 Filed 12/15/20 Page 116 of 459 HIGHLY CONFIDENTIAL

- DMS Acce . Ω Τt says "Prohibition ОП Knowledge Transfer
- Ю· And (Ву Mr. and Nemelka) you know, what right I what Ø
- disclose that have 0 mean ₩0 • access В В ი Lthat both t 0 and intellectual But, jointly, that's you you that know, property know, each μ. <u>_</u> Ω agreeing party not 0 f intended the გ Ļnot going other to intended tο and Ъе
- doesn' Of T covenant intellectual \circ \Box say not After 1. † t 0 ω covenant property compete пp not It's t 0 pete Of. it' intellectual Ø compete, simply an Ċ issue
- property, does it; simply issue

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- .S⊠ GULLEY: Objection; form.
- Yeah, Н think the 4. И heading, you know,
- 0 f Knowledge Ю. (ву $\mathbb{M}_{\mathbb{K}}$. Transfer Nemelka) and DMS 4.5 Access"; heading says correct? "Prohibition
- .S N GULLEY: Objection; form
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Q. (By Mr. Nemelka) It says here, that we just	24
correct. Objection to that statement.	23
MS. GULLEY: Objection. That is not	22
his testimony.	21
Q. (By Mr. Nemelka) I'm reminding Mr. Brockman of	20
MR. NEMELKA: 646.	19
exhibit, as Mr. Ryan asked a while back.	18
MS. GULLEY: Objection; form. What's the	17
agree to, right?	16
years. It was just the "forever" part that they didn't	15
testified is that CDK agreed not to access for five	14
back to the document where well, this is what you	13
Q. (By Mr. Nemelka) Even though well, if we go	12
believe that that was the intent of the drafter.	11
this document has got lots of words in it. And I do not	10
I'm not a lawyer like you are, and and, you know,	9
A. I'm sorry. I have to plead a little bit that	ω
MS. GULLEY: Objection; form.	7
isn't there?	Q
Q. (By Mr. Nemelka) But there's an "and" there,	И
transfer. Yeah, that's what it's all about.	4
A. I believe it's prohibition on knowledge	ω
MS. GULLEY: Objection; form.	N
Q. (By Mr. Nemelka) Prohibition on DMS access?	Н
Page 117	
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DMS obligations identifies the Access] Wind (Ву μ. Down 3 8 6 t \Box $\mathbb{M}_{\mathbb{K}}$. thi S D forth Ω. Period." Nemelka) [Prohibition Agreement n T Sections "With shall g the Knowledge 4. terminat exception and D Transfer 0 \Box Н and

SIMGULLEY: Object

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phone got been the dealerships Ω that Óţ DMS out whatever doing none calls but didn't 0 f something that you shortcomings so, And get none know, are ¥ ⊕ you know, any 0 f ano else accomplished quit they've our mutual letters mutual żt whatever might nobody quit got customers, the Н being customers have, മ got didn't this third transition mad †. document get party where worked Nobody any the that' such **₩** angry got

MR. NEMELKA: Wе can take lunch

SIMGULLEY: Let Ω go 0 f Н the record

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(Short recess 12 ω ∞ Ö .. H 42 p.m.

HHI VIDEOGRAPHER: The time Ω 42 . Q

We ' R R back from lunch and we're back ВO the record

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EXAMINATION (Continuing)

ВY MR. NEMELKA:

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Ю· afternoon, $\mathbb{Z}_{\mathbb{N}}$ Brockman

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Exhibit 648

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SIMR. GULLEY: NEMELKA: Brockman Sorry $\mathbb{N}_{\mathbb{N}}$ Brockman.

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know, hacking our systems, that's when I was talking
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7 A. Third-party relationships where they were, you
MS. GULLEY: Form.
5 size; isn't that right?
4 CDK's existing third-party relationships, regardless of
3 contract with CDK required Reynolds to take over all of
2 CDK you can set that aside Mr. Brockman your
Q. (By Mr. Nemelka) Okay. Your contract with
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A. I think what's going on here is in as the	MS. GULLEY: Objection; form.	Do you see that?	regardless of size." It's at the bottom of that page.	to take every Authenticom customer that comes to us,	bottom, to Tommy Barras, where you write, "We also want	one that you sent on Friday, August 21st, 2015, at the	Page 127	

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Case 3:20-cr-00371-WHA മ point 0 Yes, Ħ (Ву time Mr. \mathbb{N} Н did. that Nemelka) GULLEY: Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL that But Ω HForm You not think wrote been that ano that; that policy correct? Page 128 of 459 Sew Page ongoing \Box 12 аt

regardless dealershi that customer are \circ sd. (Ву 0f regardless MΥ base, SIZE Nemelka) you to 0 f know, take size. Authenticom we're people noA predominantly can customer take look customers a t ano are large

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MS. GULLEY: Form.

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right? 0 f 0 \triangleright the That's (Ву former M_{Σ} . S_{N}^{N} correct Nemelka) CDK GULLEY: customers You Objection; wrote into the that form RCI you program had

mountain customers 0 fi t o work convert, .SM ahead GULLEY: right? 0 f you, Form with over 100 RCI

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MS. GULLEY: Form.

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Exhibit \circ Л 0 which Ω цb email from Tommy Barras t o you

Page 130 1 dated Friday, July 7th, 2017. Who is Tommy Barras? MS. GULLEY: Form. 3 A. Tommy Barras is head of our our software 4 group. Q. (By Mr. Nemelka) And he wrote to you about CDH 6 vendors that moved into the RCI program, right? 7 A. That's correct. 8 Q. And he writes, "Bob, In 2015 you challenged 9 DEV" what is DEV, a development? 10 A. Development. 11 Q. Software development? 12 A. Yes. 13 Q "and DSV" is that data services? 14 A. That's correct. 15 Q "(Schaefer) with absorbing 157 CDK vendors 16 into the RCI program." Do you see that? 17 A. That's correct. 18 Q. Now, these are not vendors that CDK owned. 19 These are former CDK customers, right? MS. GULLEY: Form. 20 MS. GULLEY: Form. 21 A. That's correct. These these are companies 22 that had been employing CDK to enter our system as, you 23 know, hackers.	MS. GULLEY: Form. A. Tommy Barras is head of our our so group. Q. (By Mr. Nemelka) And he wrote to you vendors that moved into the RCI program, right A. That's correct. Q. And he writes, "Bob, In 2015 you chall DEV" what is DEV, a development? A. Development. Q. Software development? A. Yes. Q "and DSV" is that data services A. That's correct. Q "(Schaefer) with absorbing 157 CDK into the RCI program." Do you see that? A. That's correct. Q. Now, these are not vendors that CDK of These are former CDK customers, right? MS. GULLEY: Form. A. That's correct. These these are of that had been employing CDK to enter our systeknow, hackers. Q. (By Mr. Nemelka) And as part of the	CDK worked with you to transition those customers to	25
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19 20 24 22 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim know, ques had cus messaging cost RCI we've Reynolds Reynolds made minor couldn't customer through third-party tomers, way tion program you Ф \circ that **∀** group, CDK Áq t O Ø and SPA sell millions were That It's before That's (Ву about that request -1 CDK. had ultimately right? თ თ how vendors money Mr. supposed then customers hoping MS. NS. You custconsist Cost opposed **∀** (D 9 much data lunch, correct Nemelka) you just n T GULLEY: standpoint customers should GULLEY: ST NoT coming this t 0 Ø security dig can t 0 that have t 0 O fi മ Н make wanted the lot realize have talked out answer form going the ₩e directly Objection; You Objection; t o actually amount that back Οfi 0 f and been revenue let 0 f t O which testified through about ¥ ⊕ the out **∑** losing these, know able him had 0 fi Ф † 0 hole, 1 e SPM had lot 0 market the **∀** (D form form Ť revenue how Sh finish Н ά, CDK. to the dea been los you know, the earli fact ST through S D much Ω you know And, deal se11 becaus Уď his put That tha market that think Page but you the they the right? ₩ (D more

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16 20 24 22 21 19 28 17 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ И 4 ω \sim you 0f with did that actually \vdash right? Reynolds К unusual answer . _ Ħ eferring not the remember calculate me, \circ Ω 0 \tilde{o} because what record, make Yes, SPA which (Ву H(By (Ву (Ву That' t 0 3 9 9 you're 1 Mr. Mr. ∄ Mr. are μ. supposed the Οfi . SM SIM.S™ Ω Н Н MR. that Just not that right you made he'11 believe Nemelka) the Nemelka) Nemelka) Nemelka) security val GULLEY: NEMELKA: GULLEY: which GULLEY: having looking calculation; you're dealers, just ask t 0 they \vdash this realize find, the his the Well, at. And All Objection; And referring Form Objection; We're di. opportunity request, amount for not question . Д right those you know, It' correct? I'm out doing the excuse Ηt Ω just 0 f not t O 0 fi customers court looks form. form. and and Hokay, documents the revenue Ħ me being t 0 wondering മ your then **U**like reporter ន្ត្រា CDK little look Ċ but your you' shared that Page team trying that team did and Н

MS. GULLEY: Form.	25
see that that's the subject, at least, of this?	24
2017, the subject being "July 2017 Financials." Do you	23
Moss to you, Mr. Brockman, dated Friday, August 25th,	22
Plaintiff's Exhibit 651, which is an email from Craig	21
Q. (By Mr. Nemelka) I'd like to mark Exhibit	20
first of all, can you at least hand it to him?	19
just said: Statements, instructions, et cetera. But	18
MS. GULLEY: I object to everything you	17
THE WITNESS: What's that about?	16
skip. So I'm	15
you intend on reading this whole thing, then I'll just	14
team calculating the value of the CDK deal with you. If	13
about the part that we just talked about, which is the	12
document I'm only going to show you or ask you	11
you that one part about the this is a big, long	10
Q. (By Mr. Nemelka) I truly am only going to show	9
identification.)	Φ
(Exhibit 651 was marked for	7
MR. NEMELKA: 69.	Q
	U
Q. (By Mr. Nemelka) Okay. Well, then, let's do	4
MS. GULLEY: Objection to the statement.	ω
to do anything else.	Ν
to get get through this efficiently. I'm not trying	Н
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management echnically They're reports accurate Mr. not concerning description. financial And the this statements. Н inances μ. They're That's

the

Nemelka) Ω one from July

2017, that you received?

MS. GULLEY: Form.

A. Yes.

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trd \$21M, bottom-highlighted part, t 0 . Ge Page \circ plus which increases revenue 17 (Ву additional ი ე Mr. There how 0 fi etc) Nemelka) approximately part †. you SPA generated dealers, are that produced And says, d D added from \$30 the Н you "We t o bottom-highlighted million the interfaces ST could are CDK expecting turn (original Deal 0 0 with the

A. Yeah, that means that --

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data or different types of data, and it's not related to	24
rain. Either OEMs or various third parties want more	23
A. No. It's kind of like pitter-patter, like the	22
MS. GULLEY: Form.	21
CDK before?	20
Q. (By Mr. Nemelka) That they were getting from	19
would want out of Reynolds systems.	18
interfaces" means additional datasets that third parties	17
A. No. I don't think that "additional	16
MS. GULLEY: Form.	15
interfaces, which means additional RCI customers, right?	14
Q. (By Mr. Nemelka) And that includes added	13
A. That's what it says.	12
MS. GULLEY: Objection; form.	11
is 30 million, that they calculated, correct?	10
Q. (By Mr. Nemelka) The annual revenue, though,	9
money, we got a ways to go.	∞
millions. And, you know, based upon this amount of	7
position, as far as hacking our customers, has cost us	Q
A. Well, as as I've stated before, CDK's	И
MS. GULLEY: Form.	4
Q. (By Mr. Nemelka) What do you mean by that?	ω
A in 10 to 12 years, we might break out.	N
MS. GULLEY: Objection; form.	Н
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it's not you said over 10 to 12 years. That that	25
And this 30 million is an annual number,	24
Q. (By Mr. Nemelka) And for okay.	23
MS. GULLEY: Form.	22
A. That's correct.	21
CPI plus 2 percent?	20
business, your standard price increases every year is	19
Q. (By Mr. Nemelka) So you so for your DMS	18
Principally, salaries.	17
cost us extra, because we're in the high tech business.	16
represents the normal rate of CPI plus those things that	15
A. It is you know, typically CPI plus 2, which	14
MS. GULLEY: Objection; form.	13
policy?	12
Q. (By Mr. Nemelka) What is your price increase	11
products, you know, all services.	10
A. Our price increase policy covers all all	9
MS. GULLEY: Objection; form.	Φ
would have referred to price increases for DMS, right?	7
Q. (By Mr. Nemelka) But the price increases here	σ
pricing-based process.	σ
A. It's just it's part of our standard	4
MS. GULLEY: Objection; form.	ω
price increases for for DMS and RCI?	N
here what is listed here is price increases. So	Н
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A. That's correct.	И
MS. GULLEY: Objection; form.	24
market; is that right?	23
Q. Badmouthing your data access policies in the	22
the in the market.	21
and they did that, you know, high and wide, you know, in	20
know, our process, I think, unjustifiably. And they	19
A. Yeah, and the fact that they badmouthed, you	18
system?	17
result of them their data access on the Reynolds	16
Q. (By Mr. Nemelka) Is what CDK cost you as a	15
A. Absolutely.	14
MS. GULLEY: Objection; form.	13
A. Absolutely.	12
300 to \$360 million?	11
Q. You said 10 to 12 years, so 30 times 10, about	10
what they've done.	9
this particular situation even begins to make up for	∞
takes a while before \$30 million worth of revenue out of	7
hundreds of millions, over time. And, you know, so it	0
about the 30 or 40 or 50 million, I'm talking in the	Л
that CDK has cost us in the millions, I'm not talking	4
A. That's not what I meant at all. When I say	ω
is an annual number, right?	Ν
30 million is not over 10 to 12 years. That 30 million	Н
Page 139	

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recognize

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When you say

"independent

integrators,"

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don't

identification.)	Ω Ω
(Exhibit 652 was marked for	24
Exhibit 652.	23
Q. (By Mr. Nemelka) I've handed you Plaintiff's	22
A. Yes.	21
MS. GULLEY: Objection; form.	20
StoneEagle; correct?	19
Q. One of the independent integrators was	18
squawks.	17
way we know for sure, you know, was when somebody	16
know, we figure out how to block it. You know, the only	5
out a new way to come in. We don't know who it is. You	14
You know, somebody on the outside figures	13
because that's the nature of it, of of the situation.	12
actually is. It could be in there today and	11
and it's where I it's not discernible to us who it	10
well be that they, you know, figured out some new way,	9
know, security is a cat-and-mouse game, and it could	ω
A. Yeah, I don't know. As I've said before, you	7
Q. (By Mr. Nemelka) Yeah.	9
business, the bandits?	ហ
A. The people the guys that are in the hacking	4
MS. GULLEY: Objection; form.	ω
Link!.	Ν
Q. (By Mr. Nemelka) Meaning DMI and Integra	Н
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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash they They' ₩0 • $\pi_{\rm M}$ ₩e StoneEagl where been And n T program, finally changes system; business data ha Ω done their ĊŢ. they're Schaefer, В В "Bob, say, protecting g \circ Ø sign **∀** (D concerned referring getting the correct? have and Ħ \mathbb{O} That done software, (Ву (By "Oh, \Box They dn SPM you g When mow Reynolds Mr. they Mr. S_{N} dated thei Н മ ĭS. well, S O R know, μ. ש do their which \Box thei that' Nemelka) t o Nemelka) had GULLEY: ĸ RCI They' they ა ე GULLEY: and **∀**0 Ф April side not К DMS & O n T StoneEagle get data t O шaccess Ø don't a11 К Ω Ф correct allowing К Ф μ. Œ that make And anymore, Ø \Box 14, peaceful rid basically, party, that Objection; ი ე 下OK Thi sorry. Objection; they They' they' t 0 201 Ω typical Ф 0 Ω 1 Н they the has necessary Ω μ. which while, 9 Ω them StoneEagle?" do, К С \mathcal{F}_{Θ} We been right? We' Цb situation Ф joined are And don't hacking getting 'n number form but form t 0 email n T accomplished გ Իt 0 the Reynolds dо the your acce doing they \vdash the make RCI **∀** (D Ř bett 0 from you n. S D t 0 thei Ω situation Н Ŋ them question don' are RCI change Page the like the far program deale had And to മ t o get Ω К

28 17 16 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash know, emai Ω Ω wil Mr. dated Ω thi Exhibit access toneEagle toneEagle; ecurity toneEagl . Ω Schaefer, shut Wednesday, you 0 i t that Н through \circ That reasons D a11 ω (Ву know, does down was but that correct? Mr. the which first "Bob, (Exhibit the the indicate their identi this Ω . – \vdash April no Nemelka) believe RCI μ. worst fixed, Give June Ω the email current Н Ц ication. 19 653 program, this that one' 1, email them done, n T doesn't was And 2017, I've 2017 Ω context inμ. method written where \Box from marked μ. and μ. handed over \Box between where Ω say μ. Ŋ Ω you 0 f S S And that toneEagle with with with notice that for they you you acces mode t 0 that ი ე the Ф μ. write $\mathbb{Z}_{\mathbb{N}}$ Ω Plainti _ Ω linger Ω Пe that refer -gh second Н came And, Schaefer Page 0 red **∀**0 Н Н ,dn you 143 Ω \Box Ö

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years 0 their And dn method t 0 the 0 Н access ime, and had for been protected for several while

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MS. GULLEY: Objection; form

A. That's correct

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RCI

program,

right?

 ∞ (Ву Mr. Nemelka) And their method 0 Н access

was -- I'm sorry, Mr. Brockman

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 \vdash 4 ω \sim Case 3:20-cr-00371-WHA I've SPM Snz trated К their been own. method saying Уď You these know, all Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL They people along this they indicates, And Wе were were Н think very, doing you this know, very it Page 144 of 459 one a11 Page what on line .44

Do providers Reynolds how many Authenticom about you 0 recall -1 DMS $\mathbb{Z}_{\mathbb{N}}$ questions SPA Two, got providers Brockman, asking Authenticom and cut about how many $\mathbb{Z}_{\mathbb{N}}$ 1 got u, data the Schaefer 2015 serving shut dealerships does state off you t 0 Reynolds Authenticom 0 asked Н compile You affai for $\mathbb{M}_{\mathbb{K}}$. wanted apps ĸ ŭ each DMS that provide Ω before chae: t 0 know

MS. GULLEY: Objection; form

Н Ö Not ask Xsp specifically, that but Н would not рф unusua

(Exhibit 654 was marked for

identification.)

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information?

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intif: 0 Н ω -(ву Exhibit Mr. Nemelka) 654, which $\mathbb{M}_{\mathbb{K}}$. μ. Brockman, Ω an email I've handed you

Schaef t 0 you, dated Friday, November 20th, N 015

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- 23 HO will him give starts you the മ chance chain g t 0 the look back a t page it, but your email
- 20 24 Н the back
- Ħ looking ц page Н you rec :a11

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Page 145	raye 143 01 439

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Ю·	Α.		Ю·		Ю·		forth, right?		Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 146 of 459 HIGHLY CONFIDENTIAL
(By Mr.	Okay.	SM	(By Mr.	SM	(By Mr.	SM	ight?		0371-WHA
(By Mr. Nemelka)	Okay. Would you	MS. GULLEY:	(By Mr. Nemelka)	MS. GULLEY:	(By Mr. Nemelka)	MS. GULLEY:			Document 69 HIGHLY C
Sure.	repeat	Form.	Is that	Form.	Those	Form.			0-20 Filed CONFIDENT
These	that ag		t right?		are the				12/15/20 IAL
datas	again?		•0		the columns?			Page 146	Page 146 of 45
								16	9

- are ReminderTrax, Reynolds 0 \triangleright And Correct applications; S D IMN, the Xtream, lef \Box are correct? OnlineD the DMSs and that KeyTrack,
- correct? dealers บรค
- \triangleright \tilde{o} Yes And what Okay. thi Н μ. 1 showing Н understand გ Ļthe that connections Mou

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- that Authenticom provides († 0 the dealers using the
- DMSs; correct?

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- SMGULLEY: Objection; form
- \tilde{o} (Ву Mr. Nemelka) For Tor these various
- S_{N} GULLEY: Objection; form.
- Ю· (Ву Mr. Nemelka) S H that correct?
- NS. GULLEY: Form.
- \triangleright For instance, μ- $\vdash h$ he looks а t the CDK line

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A. Yes.	Ю
Do you see that? Your email to Mr. Schaefer?	24
state of affairs before Authenticom got shutoff"	23
que at your email, you say, "Bob, Questions on the	22
Q. (By Mr. Nemelka) If you look back at your	21
Form.	20
question?	19
MS. GULLEY: Objection; form. Is that a	18
applications.	17
is providing access to that data for these Reynolds	16
of that the dealers that use CDK for whom Authenticom	<u>1</u>
Q. (By Mr. Nemelka) These are the CDK numbers	14
What's that got to do with Authenticom?	13
A. You you keep referring to the CDK line.	12
MS. GULLEY: Form.	<u> </u>
we looked at, right?	10
Those are the questions that you asked on the email that	9
many dealerships are there from each DMS provider?"	ω
provider's data does Authenticom provide to us? How	7
of he's answering your question, which is: "What DMS	Q
what Mr. Schaefer is reflecting here are the number	σ
Q. (By Mr. Nemelka) All right. Well, just	4
this this chart is concerned.	ω
not getting what you're trying to get at as far as	N
that's where the 199 number is. And I I'm afraid I'm	Н
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24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash what with not dea questions, providing Ω dealerships Q are CDK Authenticom Authenticom Reynolds instance Authenticom Ω erving <u>а</u> Т not line getting erships he that the \circ \circ \triangleright related μ. ďn did \Box Okay. Right application, CDK And Okay. Yeah, (ву and with that CDK appears which are got დ Իprovide here. that provides 1 Mr. you line dn μ. SIthat's but, you to 199 Ω cut But But there say, ი ე Nemelka) providing But g <u>ი</u> GULLEY: O that to ΛM number the you 0 f that the t 0 where me not you what understanding and from each Н "The "What line .. ; sn number point know, = tnq ď with that application the does the CDK "What Well, this state Objection; to DMS your ReminderTrax Do Authenti you keep has 199 access that ReminderTrax these Authenticom DMS DMS provider you **₩**@ he ' question 0 f ը**։** been В I'm provider a É S B M B S can are 0 0 0 provider' Ω .com this form fairs answer referr Authenticom tha ask dealershi that <u>-</u> line Ω ი ც Sew has Н have data 4 m chart Mr. gur before he For gur. Ω that not been data μ. t 0 Page your How does Н-Ω Schae <u>.</u> \Box the 0 μ. The does Ω the

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 \vdash Case 3:20-cr-00371-WHA are there from each Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL DMS provider" for that? Page 149 of 459 Page

 \triangleright Okay NS. GULLEY: Objection t o that

SIMGULLEY: There' Ø ou questi

3 9 9 where that answer understand ი ე the the question. CDK line g \mathbf{H} just the first don't

about that (Ву $\mathbb{M}_{\mathbb{K}}$. NoA can Nemelka) put that Okay. aside We ' 11 ask ĭΖ Schae

fer

Mr. Schaefer, are you aware

SIGULLEY: Mr. Brockman

MR. NEMELKA: Ι'm sorry. Strike that

0 (Ву Mr. Nemelka) M_{Σ} . Brockman, are you aware

opportunity close date list with respect t O dealer

customers?

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SIMGULLEY: Objection; form

 \triangleright An ERA EXT?

 \circ An ΕRΑ DMS expirations and opportunity close

dates.

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SIMGULLEY: Objection; form

Ι'n \vdash Ħ not familiar with any kind

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Ю (Ву 1 Nemelka) A11 right \triangleright Ω \Box 0 Ť thos

MS. GULLEY: Objection; form.	N 5
independent integrators, right?	24
that contract, then you stop that dealer from using the	23
Q. (By Mr. Nemelka) And then once you close on	22
contract renewal negotiation process.	21
customer's standpoint while we're in you know,	20
we've taken measures to keep the things quiet from a	19
of relationships, that what we've done is, is we've	18
part of the the process of unwinding hacker-type kind	17
don't know that policy is still in place, but I know as	16
A. I I think we have done some of that. I	15
MS. GULLEY: Form.	14
window; correct?	13
type of interference with that during that six-month	12
use independent integrators like Authenticom from any	1 1
Q. And Reynolds has protected those dealers who	10
A. That's right.	9
are coming up for renewal in six months, right?	∞
Q. And Reynolds keeps a list of those dealers that	7
A. Okay. Okay, I understand that term.	Q
Q. Yes.	Л
expiration.	4
A. Okay. You're talking about, you know, contract	ω
within the next six months?	N
dealers that have DMS contracts coming up for renewal	Н
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What's happens is and that's that the	25
that sort of thing.	24
end-of-month, general ledger, schedules, parts ordering,	23
30 what we call "batch jobs." This will be, like,	22
30-user system. Linux will allow you to start running	21
an interesting attribute in that let's say you have a	20
operate the Arrow system it's Linux and Linux has	19
operating system that we use on the computers that	18
A. I understand about this one. The the	17
MS. GULLEY: Form.	16
syscheck? Syscheck, s-y-s-c-h-e-c-k?	15
Q. (By Mr. Nemelka) Mr. Brockman, what is	14
A. Not over a long period.	13
MS. GULLEY: Objection; form.	12
contract, did you did you let them?	11
to use independent integrators after the closing of the	10
Q. (By Mr. Nemelka) And if they want to continue	9
occur.	Φ
A. It's an opportune time for that discussion to	7
MS. GULLEY: Objection; form.	Q
contract?	Л
Q. (By Mr. Nemelka) After closing of the	4
look at their their data security policies.	ω
recommend more more strongly that they that they	Ν
A. I think at that point in time, we we	Ъ
Page 151	

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 \Box 0 customer Ĥ many into ible things throughout Ф μ. Ω hol D get where Ω allowed going the response whole to, unknowingly, system time becaus Ω going kind Œ they t o Οf Page step 15

they printing department, typicall server manner ccounting the can completely 0 fi part $\dot{\prec}$ invoices basically big, გ Ļdepartment' when Ď മ and long, battle they' S S servi gobble whatnot, that huge К В Ø between 0 0 end-of-month, doing the the department reports service the people capacity -1 -1 account they they' advisor Ω n T they want 0 fi K B the Becaus gni the Ω Ō have ŭ lling parts to department どな Ø unz, a11 the writing 0 par Н the and

you department because μdoes Ω operating meter (D) esponse \Box will how know, Ø busy not დ ტ ტ Ħ \Box Н sys meter imes they essence 1et how the That tem for Ö do, somebody wher ysnd whole there Ω that the think what they're Ø things გ | you parts system μ. 0 f syscheck Ţ 1 മ goes can going മ department are \Box อธก μ. go മ Ф Ω and Ω place К and t 0 മ And Ω Things Ω tart checks meter destroy, Ф 11 interrogat insid syscheck, and മ about are bat that the 'n checks you know too the servic area what Hysnq Linux that μ. \Box

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20 24 22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim had you dated Exhibit somebody Authenticom syscheck Ω would works numbers; syscheck? "Great ready know, exempted Ю \triangleright 0 \triangleright Ю August rea Ьф day," 6 5 5 too How does გ ე-And That's That's correct? Because മ (Ву (Ву (By get way doing busy asking would good $\mathbb{M}_{\mathbb{K}}$. M_{Σ} . $\mathbb{Z}_{\mathbb{N}}$ and for 15, these which not NS. . Sĭ their (Exhibi that identification.) correct correct 2017 he' Nemelka) Nemelka) the Nemelka) various you GULLEY: GULLEY: things. know ი ე exemptions for **∀**0 Ω \Box 1 цb giving cause that get \circ Ф randomly they And П email dat batch SPA All thei And And Form I've Objection; <u></u>тthe Authenticom you run are acc what job they you from you Ø К marked cause handed subject an update busi bat \mathbb{O} user Ω and wrote Ø ch he know μ. point _ ness form Authent for you jobs the IDs Ω gri to 0f ays tha ը Մ done Ω ц . D the Tommy Plaintiff' that system it' n T шtha Н Ċ correct? exemption .com syscheck through order email Page Reynolds and "Today Barras ი some გ Իto,

Q. Today?	25
down I think it's 300 or less.	24
A. A long haul. And frankly, by now it's now	23
Q. All right.	22
has been a very long haul.	21
A. Okay. Yes. That that's what it says. It	20
Q. (By Mr. Nemelka) Your email at the very top?	19
A. Umm (Pause.)	18
MS. GULLEY: Form.	17
Right?	16
agree - it has been a long pull - good to get there."	15
Q. (By Mr. Nemelka) And then you respond, "I	14
A. Yes, I do.	13
MS. GULLEY: Form.	12
later." Do you see that?	<u>1</u> 1
exemptions at the beginning to just over 500 ten years	10
writes, "Been a long road but we went from 12,000[+]	9
Q. (By Mr. Nemelka) And then, at the end he	∞
A. That's correct.	7
MS. GULLEY: Form.	Q
he's saying here?	U
IDs, but that dropped to 527 in one week? Is that what	4
as in August 14, 2017, you still had 932 exempt user	ω
exemption dropped from 932 to 526 in one week." So	N
is a good day from the security standpoint. Number of	Н
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2 24 23 22 20 19 28 17 15 14 13 12 11 10 21 9 9 ∞ 7 \circ G 4 ω \sim \vdash they type unt and send reporting and that IDs where there certain 'n. the happen $\dot{\vdash}$ these of can 10g \tilde{o} right? , O RCI ļ Ω to μ. you the \Box ou interfaces interface equivalent Ť run And \mathbf{H} require vendors (Ву That's Ω Today, types software interface Н data zero restriction every know, themselves Mr. that these SIMMS. Now, 0 f think correct uh-huh extracts day RCI Nemelka) these t 0 GULLEY: GULLEY: batch will exemptions that Н from there' And truly takes with they interface that Οff g to are job, γф are CDK you that batch make Hplace want that whoevhands that, Mr. will Form situations would Objection; what თ თ know, you are the there' jobs, μ. well, Brockman, forever their not 0 \Box **∑** (D depend know, Н there dealer \Box 0 with he call you Ьe Ω where apps Ьe right? 9 where മ form. protect ი ე from completely themselves done know, enti whatever ease second you Ω "batch work, they can looking rely anour Reynolds, believed ed conveni there you type Page jobs." they're g happy know and that' are Tor 0 the 155

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work, within Xtime ctually ĸ \tilde{o} does they application our part (Ву got what system Mr. Οfi Those to Xtime our Nemelka) keep t 0 types software, does, doing t 0 0f work, And you Ļ; applications, what know, Ħ forever you order шknow, Н they they Αs have you since their Wer long know, t 0 RCI t o they' do Ω for to). K (H)

how cut would H Н they Reynolds? operate What what how would Ø

MS. GULLEY: Objection; form

- you basically actually know, runs Well what ф Ф unable inside they since do t 0 ano thei อธก today software ano their software you know, thei to accomplish, К they stuf would
- DMS product (Ву ა ე Mr. Nemelka) μ. Ω. sti -cky NoA produc believe \Box right that the Reynolds

MS. GULLEY: Objection; form.

К é1 . لا tionship don't t o the think DMS I've I've ever ST used ed tha that \Box term tha Ċ n T \Box D mZ uT.

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 \vdash 4 ω \sim what р dealership relationship Ō Hthey mean from would μ. t 0 Ω speci Ф have financial ა ე Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL fic they' t O products think Zе standpoint O S hard advantageous ВУ about that "stickiness, changing they Page would 15

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the μ. other Ω the \tilde{o} applications the collection (Ву retail Mr. Nemelka) 0f management മ the Ω you were DMS And system; along what describing, with you're correct docuPAD referring tha Ċ and t 0 the

.S™ GULLEY: Objection; form

exactly correct, That's but that's it' Ω pretty close close Okay? That Ω not

Ю· (Ву $\mathbb{M}^{\mathcal{K}}$ Nemelka) Okay. ე ე finish μ. \Box for me

What did miss?

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NS. GULLEY: Form.

know, speci Н **∀** (D 1 C product Well don't ₩ (0 ref Ω talk G G like t 0 about the docuPAD, RMS stickiness μ. tsel for Н instance S D n T being regards NoA which t 0

Ω collection 0 f everything മ Ω being sticky Wе

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alk about specific products

SIMGULLEY: Were you done with your

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HHH WITNESS Yeah

SIGULLEY: Okay

MR. NEMELKA: \vdash wasn' \Box Ω T arting \Box O Ф Z S മ

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MS. GULLEY: Objection; form.

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A. Yes, they did.

MR. NEMELKA: A11 right have no further

questions today.

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MS. GULLEY: Okay. Let's go off.

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One Pennsylvania Plaza	17
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GY J. WEDGWORTH	15
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					exhibits to reflect the deponent	Veritext will be adjusting the numbering of the duplicate	"Plaintiffs'-670" through "Plaintiffs'-679." Accordingly,	Lamb, causing a duplication of exhibits	inadvertent mis-numbering of exhibits at the deposition of Ronald	It came to our attention earlier today that there was an							Reporter's Certificate 370		Signature and Changes 369		Further Examination by Ms. Wedgworth 357	Further Examination by Mr. Nemelka 354	Examination by Ms. Gulley 300	Examination by Mr. Nemelka 289	Examination by Ms. Wedgworth	ROBERT BROCKMAN		Appearances 176		INDEX	Page 170

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim $\pi_{\rm M}$ was $^{\rm M}$ the And let Ω organiz correct Grow' brilliant (D) entence Ω econd arger brilli that consi H H H Lamb let then Lamb, Ю Ю \triangleright \circ \triangleright \circ \triangleright \Box μ. μ. \vdash ation than Ċ argest ВR Ω you Okay. ant dering wrote And And Ω Yes, \mathbf{H} you 0 loses brilliant മ Mes \Box believe the Hendrick? under Н-Hsay, Н the made WĽŻ Ή ū ma'am. "The **∀** (D μ. publicly t o Hmoving and ¥ ⊕ fire Yes fj. \Box made te, emai go rst the ^{1}M "However a t just and first look you But t 0 = \vdash "Ron, page that รมโ heading Hendrick \vdash from you still found made say, mow at the Do owned Ф half \Box slight point you your Ω wrote the Ф Reynolds 1 e right tarting gus "The Ω ა ე Ħ group 0 f 11 tt first 3 0 0 മ ght email Ċ D \Box trying \mathbf{H} t 0 n Ti thi К addition. this because Ф Ф under \vdash found that? with rst. Mr. time time the μ. Ω slight addition half Ħ to at μ. letter the Ω t o hal CDK; Ļ; the Lamb? the മ ш. when 'Upgrade they're 0 f SZ. the let Н country addition. T 0 f Do 1st page ĊŤ. his Ω Hendrick Penske H H First Page the you Do the and that letter 0 f 3 9 9

down the page, there are "Convert with Risks" where	24
Q. And in this letter, on the first page, halfway	23
A. Yes.	22
Mr. Hendrick and Mr. Brown; correct?	21
to Mr I'm sorry Mr. Lamb writes the letter to	20
Hendrick automotive group, Mr. Lamb writes this letter	19
Q. And in trying to keep the business of the	18
A. He was president of the automotive group.	17
know?	16
Q. And Mr. Brown's title at Hendrick is do you	15
operation. Mr. Brown was in in charge of that.	14
racing operation, not the dealership management	13
time, he was fully consumed in running the stock car	12
very involved in stock car racing and, at this point in	11
But as you may or may not be aware, he's	10
the the titular head.	9
not actively involved in in this process. He was	∞
for Mr. Brown. Mr. Hendrick, at that point in time, was	7
A. Yes, ma'am. I think it was primarily intended	σ
that correct?	ហ
business, Mr. Lamb sends this letter to Mr. Hendrick; is	4
Q. (By Ms. Wedgworth) And, in trying to keep the	ω
A. Yes, ma'am.	N
MS. GULLEY: Objection; form.	Н
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Mr.

Lamb

writes,

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20 24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash pers previously quotient 9 dealers to, Ω personnel Ω dozen collision Again, happen. conversions would convert makes isks υ tructure Ô ollision Ьe you onnel, And ∞ \circ take Ф dealers μ. = μ. \Box one know, 0 Н t 0 that Ř Get Well Yes, Do (Ву (Ву you you centers that ი ე centers, with Ф stated, dealer go you -G . S . \mathbb{N} very serious know, accept And SIMlikely .SM take ma'am. dn has again, whatever, agree dealers each Ω. Wedgworth) that Wedgworth) j. გ ე-GULLEY: GULLEY: serious S O K that the \Box the μ. Ö Ω challenging take you about the dealership р two with be, the causes The that maj biggest sheer project have, fact but you dealers project 9 issue years sheer learning Form the tha Objection; \Box One tο project Even scale, you that know, Ċ Ω you know, problem, training has just for μ. \Box Ω Ω convert Ω 0 $_{\rm f}^{\rm of}$ 'n. tatement know, and 20 മ N \mathbf{H} Ċ \Box Œ change recover you one the taught 1. 1 those four one way 0 with with form Ď Ť one Ω new nwo and the dealer Áq know, 95 dea greate 9 ļ I've Ser risks dealers ш. О thing far, Ω risks μ. ller risk they personnel educat Ω software sets going snor caus 20 N Page Ľ, have 0 ū to S D though, 02 Ω μ. Н \square uo' μ. Ω \Box wha μ. \vdash μ. ש \Box **∀**e \Box 0 ĊŢ.

24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim Case 3:20-cr-00371-WHA page SPM dea you that dat somewhat Do dealerships \Box years ins correct? \Box O you מ Ьe lership ä could have such ance says are \triangleright \triangleright \bigcirc \tilde{o} \circ trained, to 0 0 0 publi that Well, 1088 Yes, But the Do take ü recover. That' zay Kes (By the think originally think that? this who you ĭs. here, Mr. same quite . Q Ø NS. number than \vdash it i t But because that agree dо convert correc that particular Ω. Wedgworth) Lamb writes also issue could GULLEY: Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL less Mr. complete, μ. മ You τthe 0 മ മ with while Ω H 0 f depends Lamb using agree 0 f take much people than well; that the that Form training situation, says, the ten because The smaller the publicly number with "Reynolds 1 g correct around number statement? assuming last the statement Ιt \vdash that the 0 f publicly think will Ω this sentence avai 0 f the μ. Τt people tracks personne М Ф т. right? dealerships Ω the Page 226 of 459 lable level likely 0 \Box ould გ Ļable went Ť that available O T number that Page Эd wrong, 0f this take risk ģ 18 μ.

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22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 ∞ 7 \circ О 4 ω \sim goes grammar Ω spelling Ω the 9 μ. S D Ω Hendrick Hdat alespeople t L \Box tatement \Box writ Ω fi Ω ertainly into Ю. \circ К stand μ. ten Ø \Box and, Well, errors N_{O} Well Automotive Ф (Ву Ω - μ. (ву half this \Box page დ Ի-Ω уд are sounds NS S you . S . μ. really Ω S_{N}^{N} ĭS. SIMtrue, 0 f this Ω when first that? and, not that complete. tatement? think know, Wedgworth) Wedgworth) GULLEY: GULLEY: GULLEY: thi like only you okay? necessarily lette you 0 fi he' describes Ω the punctuation letter all, say Ф Ω know, seven К lot less No, Objection; $^{\Omega}$ Objection; Objection; that "complete Well And the HSew 0 that it' than 9 O K didn't everything \Box Н $\mathbb{Z}_{\mathbb{N}}$ the complete? dealers, stat Ø eight brilliant and you pleased not Lamb greates complete Φ I Ŋ form form form = detect commented spelling μ. \Box Ф WĽŻ ū but that Ф T മ the me paragraph \Box any S D цo Do μ. ש go \Box statement and this ze. lot Ö Ω that not that he Ф

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0 Of f chart Ť when the Ю. മ let: \Box the (Ву group ter . S. dot at t converts Of. Wedgworth) the the top, page? from μ. \Box Ηf says Reynolds **∀** go "Here t 0 the Do とな you next example დ Ф Ф page

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and Herb's H Q Morse Herb Chambers, and And other then auto underneath Prestige dealerships Management and Do \Box list you Services

 \triangleright Yes,

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employee the that? there fir Ю μ. Ω Ω \Box And turnover മ year significant then 9 O K M_{Σ} . and two 0 f Lamb customer drop മ writes conversion n T sales, disruption." "In given which nearly დ Իa11 Do all expected you the cases, 3 0 0 0

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Ω Ω where, ome tatement 0 Ť you the know, O O And customers certainly that certainly, 1 that n. Their you these has problem been cases pick മ Sew here Ф Sed true and \mathbf{H} know

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim given \vdash happening that are that nearly thes h T completely Ф tha which shown that \square ecord. rue; \Box H \Box this true D a11 the Ø 0 \circ \tilde{o} that' გ Ļa11 part here izst μ. n T all they ļ uT letter Well, expected Yes, 'n. dealership, Ω Ω (Ву could (Ву this the cal ituat tatistics icular Ω the are cases, had, the \mathbb{N} . ™S. don' MS. employee H.Sĭ Ø you not result tandpoint, true. do. Case suo don't tatement think you Wedgworth) Wedgworth) \Box dealerships the GULLEY: there GULLEY: bе stand by agree that you i T know, These that, that first you? 0 f But true turnover all ი ე going are know, that you to you turnover Objection; Objection; Ф year 0 f the Well are say significant Ť shown 0 2 one that know, these to them, know, മ leaders and Ω S O K that Ω മ conversion, tatement can Hendrick you for mat μ. there's a t two statist the customer \Box that' but necessarily form ter form they' approved the these Of stat drop К H \vdash ĭΖ Ø 0 ou К Ф don' dop Automotive മ \Box believe Н what . ე O Ω publi dealerships шdisruption? conversion, question uT T Ċ Ω that Lamb ЗаУ, \Box change Page could this sales they're infer 9 from i Ti wrote are 191 эď

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conversion had something to do with their lowering in	24
representing to Hendrick Automotive Group that the	23
Q. Okay. And in this chart, Mr. Lamb is	22
A. Yes, I do.	21
down 32 places. Do you see that?	20
142 with a change, according to this chart, of going	19
be the most recent data for this letter they're at	18
ranked them as 110. And in 2014, which is appears to	17
Q. And then last year Aut Automotive News	16
A. Yes, I do.	15
that?	14
Group, it had a conversion year in 2009. Do you see	13
Q. So the last one on the chart, Gordon Auto	12
A. That, I I don't have knowledge of.	11
next, have yet to recover?	10
above, where they drop in sales from one year over the	9
Q. And do you recall that these groups listed	œ
A. Yes.	7
recovered." Do you see that?	O
"What is really surprising is these groups have not	И
Q. (By Ms. Wedgworth) The next sentence says,	4
A. Yes, I did.	ω
MS. GULLEY: Objection; form.	Ν
Group; correct?	Н
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24 22 21 20 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 10 9 ∞ 7 \circ О 4 ω \sim \vdash people price News dn but Hendrick approval, Ω making Automotive whatever where dealerships К d L vehicles z g g anking. discounting μį മ വ erent And ranking with Ω enough money. hi: profi And dealer sold T.t t O And Ø And What then That's beli saying Dealerships News ranking not he დ Իtakes n T the they . D Н . Sĭ But gets and will Н typically spite Ħ what convert; ranking S D μ. happens regard his hi \Box saying GULLEY to not kind μ. SPA his want Ω Ω the Н sell it' 0 f And 7 16 int concerned Н t 0 ,dn name 0 Ω Œ S D Ω "brilliant" μ. a11 number to Ηh 0 continuously ernal \Box tandard Ŋ try more Ö Ω then inherently saying Form changes sale the and have that in that like 0 profi he and cars, ടപ്പ then lights, Ω 0 his 0 f sell and Ť correc n, decides $^{\rm M}_{\rm M}$. დ n T thi that' cars Hmeasurement \Box very order he O S which name have n, Ω Automotive number numbers everybody Lamb quotes and Ω he ' decides sold, (indicating) thi n. competitive മ t 0 that means 1 \Box he ī Ω 0 little tighten light go Оb number convince Automotive gets with Page he between go down, he Ω bit Ω your his cuts മ 19 dn not 0

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contract, the charge would be in that area. But to say	brand-new document, like, for instance, a new finance	A. I disagree that that's for any change. A whole	change?	docuPAD, is there a cost of of around \$300 for any	Q. And as to any change on any form used on the	A. Yes, ma'am.	maintenance fee per docuPAD of \$1,000 a month?	Q. (By Ms. Wedgworth) And is there a monthly	A. Yes, it is.	MS. GULLEY: Form.	somewhere around \$10,000 per unit?	it is the price for that purchase and installation	and some yesterday. If a dealership buys a docuPAD, is	Q. You mentioned docuPAD in your previous answer	new software promptly, you know, that can occur.	properly. If they don't force their people to learn the	A. Certainly if they don't educate their people	two years to recover?	some dealerships who convert, it takes at least one to	Q. (By Ms. Wedgworth) Is it fair to say that, for	reasons.	Automotive News ranking, and other motivations, other	there's there's other factors that have to do with	big conversions, are a problem. But what I'm saying is	Page 194

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 10 23 9 \vdash ∞ 7 \circ О 4 ω \sim done you μ. Ω heard don't Н 20 document docuPAD, document charge other correct. that jiven Ω if t μ. SZ HB, \$300 know, \Box Н any something ∞ 0 0 \tilde{o} day dealers keep plac than installation, п Well everything change Ma'am, 0 Hμ. To Эd Can that Н К Ω \square that Ф those made the the the form with any μ. docuPAD CdO .Sĭ say Н \vdash does n T would \vdash best dealers don't entity average know kind change \Box Ω ection; that error, You 9 GULLEY: SPM μ. **∀** (D μ. μ. Ħ form 0 f free μ. \Box Ω 0 f 0 f regard \Box know, that know \$300? not that surpri would ₩ 1: will for charge МY surpris 9 form in i situations, S O K .th Ф working, that knowledge, ĊΤ area, Objection. which case any ever there' produced fіX document? say t 0 regard Ω Reynolds? \mathbb{O} you 9 change, there docuPAD most that that you seen Ω you any they not t o t o μ. the at unless would μ. d anything **∑** (D change any HΩ when say roughly would know, Ф m ць ou Ω contrac would stat ау sorry docuPAD not tha average charge you **∀** any ц Ьe correctl that ПO Ċ \$300? adjust, have bе \Box นรе മ change n, the But the

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\vdash	is completely user driven in that you interact with
N	you know, the screen, with the stylus. And you make
ω	your choices with no pressure, you know, from the
4	finance manager. And customers love it. The reason why
Л	dealerships love it is and that's because customers
Q	have a chance to choose. And a miracle occurs; they buy

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aside and we can go on to the next document.	25
Q. (By Ms. Wedgworth) Well, then let's put it	24
time.	23
A. Ma'am, I would really like to read it one more	22
instruction.	21
MS. GULLEY: Objection to the form and	20
stick out as being inaccurate to you?	19
read it again. As you reviewed it, did did anything	18
Q. (By Ms. Wedgworth) Well, I'm not asking you to	17
A. I would want to read it again.	16
MS. GULLEY: Objection; form.	15
you're aware of that's inaccurate?	14
Automotive Group. Is there anything in the letter that	13
review this letter that was sent by Mr. Lamb to Hendrick	12
Q. (By Ms. Wedgworth) Now, you've had a chance to	11
A. Well, there's one that I know of.	10
MS. GULLEY: Form.	9
occasion; is that right?	ω
Q. (By Ms. Wedgworth) And you said there was one	7
A. Yes.	Q
MS. GULLEY: Form.	UΊ
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question. It was it was straightforward. "Yes" or	ω
where a dealership can sell their docuPAD? That was my	Ν
was simply: Are you aware of any incidents like that,	Н
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they 0 short Ф based discount Ъ. Ť scount choice the can term nodn system discount that go the They contracts for μ. the Ω length can Ф Ω longdealership and appreciably go 0 f for term that' we'11 the മ contract Ø will short contract say the les: മ achieve, Ω term ω \circ the they And -month contract And level the Ω μ. L G that \Box contrac will dealer Ф 0 better buying Ьe ha ū

0 Are there any DMS contract ū at Reynolds longer

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using Ω you know, better usage Builder there oftware Query Ω software always Wе because very, want Builder get And times very **₩** t 0 n, We delete want and when old that don't V O t 0 and it kind that <u>-</u> വ get want obsolete-type rather arises rid 0 fi software t 0 phased situation, 0 f continue they when a11 not somebody because Query t 0 ЭSП there' type maintain Builder ¥ 0 Query have

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different options. You go out and you you walk the	23
looking for: different colors, different trim levels,	22
vehicle. You have some of those type that they're	21
dealership. They're looking for a certain kind of	20
like this: You have a prospect that comes into the	19
a a process in the in the dealership world. It's	18
A. I think it came about by the fact that there's	17
MS. GULLEY: Objection; form.	16
Q. (By Ms. Wedgworth) How did ODE come about?	15
MS. GULLEY: Objection; form.	14
Q. How did that come about, ODE?	13
A. That's correct.	12
Q. Do Reynolds and CDK each own 50 percent of ODE?	11
A. That's correct.	10
CDK; is that correct?	9
Q. And it's a joint venture between Reynolds and	ω
A. Yes, ma'am.	7
familiar with that organization?	σ
little bit about ODE, Open Dealer Exchange. Are you	И
Q. You can set that aside. I want to talk a	4
of expediency due to development processes.	ω
and that's that I I'm being forced into a situation	Ν
Mr. Schaefer, and he understands what I'm doing is	Н
Page 204	
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22 20 19 28 17 15 14 13 12 11 10 23 21 . თ 9 ∞ 7 \circ О 4 ω \sim \vdash they Dea but potential with applicati and prospect Ω Q Ω involve Д kind enter know, art inancing al . Ф Д O Н lert esperson like get Н Ω ership 0 f more \Box the transactions wouldn't Н rack ū μ. their Н takes this they on, t 0 financing. (By they And transaction, has you leather pull gets And ĭs. you and one have what SIFICO മ But know, can p e O leap Dealertrack here. know, what Wedgworth) μ. цb their dif GULLEY: has surprised any \Box work Ήt and score. that authorization Ω Ф 10g Н ferent does t 0 なと = enjoyed happens what giant the credit l e don't out t e involve help And the S Jus And information <u>ი</u> has kind Уď മ the leather types good. percentage the \vdash know deal get very \Box μ. Ξ ЦÞ then Ω built prospect \vdash They financing 0 f and car et focusing what form done 80 0 Ť considerab they and They Ьį vehicle pull 9 Well that's salesman's inter ďn ∄ about signed the 0 f Н 90 that' go go Ф μ. finally ruj. g their where percent цp SZO. number Ω . ds that z E shopping back ODE this \Box Уd . D Ф inherent μį the Ω μ. credi Page succ heart Ω inside decides ļs, not car Car 205 for

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(By Ms.		003/1-W77A
Wedgworth)		HIGHLY C
(By Ms. Wedgworth) How ODE got started.		HIGHLY CONFIDENTIAL
t started		720 Fage 2
	Page 206	244 01 459

previous answer MS. GULLEY: Jus T let him finish his

Just go ahead and the

The how, the first part about †. Ω implies

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why.

Okay?

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0 Ns. Wedgworth) Actually, 1. doesn' \Box Ηt

SIMGULLEY: Just let him

MR. RYAN: Let me let me just know

believe the question was: How did \Box come about

think he' Ø answering that question

NS. GULLEY: Correct

That's certainly what I'm trying

.SW GULLEY: G 0 ahead and continue your

response

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inputs the n any you rate, know, а С the this facts point, 0 f the the salesperson Οf

transaction, which გ Իthe you know, the type 0 f car,

Ω what sales price 1 what the ıs, consumer's you FICO SCOTE ი ე payment

know, what

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can, with not much more than Ф press 0 f button,

send that package 0f information to potential lender

And the lender can look a t Ċ and say "Yes 9 O K "No"

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conversation, again, was not between me and CDK. It	25
A. I I would say that the the first	24
MS. GULLEY: Objection; form.	23
from CDK, initially?	N N
Q. Who did you speak with about the joint venture	21
organization.	20
with me. It was it it was somebody else in our	19
A. I don't think that the contact was directly	18
Q. Who contacted you at CDK?	17
my my belief is and that's they contacted us.	16
A. I don't specifically recall that, but I	15
initially?	14
Q. Did you contact CDK or did CDK contact you,	13
A. I was responsible for the Reynolds side.	12
to enter ODE as a joint venture with CDK?	11
Q. (By Ms. Wedgworth) Were you the decision maker	10
and become successful in that marketplace.	9
ODE's goal was, was to be able to replicate that process	∞
basically, a near monopoly on that process. And so	7
job of of building that that product and has,	Q
financing process. And Dealertrack has done a very good	U
And it facilitates, you know, the whole	4
employment."	ω
will work." Or "We need to have some more proof of	N
"Maybe," or "Maybe with a little more down payment, it	Н
Page 207	

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after that, that I had conversation. And the name that	over in the product planning area. And it was only	was with other people in our organization, principally	Page 208	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 246 of 459 HIGHLY CONFIDENTIAL

- planning, \circ (By Ms. spoke t₀ Wedgworth) CDK concerning Who аt forming Reynolds ODE? in product
- been involved Certainly SPM Jon one Strawsburg Of. the people that would have
- Ю· Anyone other than Mr. Strawsburg?
- \boxtimes I'm sure there was, but \vdash can't remember
- specifically.

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Workman.

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- largest Ю· competitor; you Ω that yesterday മ fair statement? your
- \triangleright That's correct
- \tilde{o} Why did Reynolds enenter nto മ **U**oint
- venture with \Box Ŋ largest competitor?
- like competitor, know, this, worth Well one it? \vdash can i t has Πn wasn't assure t 0 this decide, particular you because that ი Lthey the But case, opportunity, were uT ш. Ċ our the appeared situation largest t 0
- do that Who Н you might don't The they dо other partner it, principal what ďn else with? factor might, Might you Ω they know, and partner that' CDK

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1 1 1 9 8 7 6 5 4 3 2 1	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 247 of 459 HIGHLY CONFIDENTIAL Page 209 up with somebody else, which would mean that we would be forever locked out of this very attractive business that Dealertrack has. And so the decision was and that's we ought to proceed, but proceed carefully, investigating, you know, the potential with ADP. Q. Was ODE founded around 2009? A. I don't remember the exact date, but it's been a while. Q. And the decision to proceed with CDK was made by you? A. Yes. Q. And in making that decision, you said you spoke
o 0	DE founded around 2009?
7	. I don't remember the exact date, but it's
00	
9	. And the decision to proceed with CDK was
10	
<u>1</u> 1	
12	. And in making that decision, you said you
13	to Mr. Workman at CDK?
14	MS. GULLEY: Objection; form.
15	A. That was one of the people that that I
16	talked to.
17	Q. (By Ms. Wedgworth) Who else at CDK did you
18	speak to?
19	MS. GULLEY: Objection; form.
20	A. I'm sorry. I I don't remember the names.
21	You know, I think that there's you know, there's
22	been I know there's been turnover in that

MS.

GULLEY:

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organization,

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Ron Workman was

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person

person or by phone?	25
Q. And are those board of directors' meetings in	24
A. That's correct.	23
correct?	22
Q. Well, ODE has board of directors' meetings;	21
me to answer?	20
definition of of "meeting," you know, would you like	19
together and some are on the phone? You know, which	18
where some of the folks that are involved are all	17
where everybody that's involved are all together? Or	16
answer on that are are we talking about meetings	15
A. Well, I I think in order to give the correct	14
Q. How many?	13
A. Yes, ma'am.	12
CDK and Reynolds had meetings in person regarding ODE?	H H
Q. Mr. Brockman, focusing you back on ODE, have	10
BY MS. WEDGWORTH:	9
EXAMINATION (Continuing)	ω
and we're back on the record.	7
THE VIDEOGRAPHER: The time is 10:17 a.m.,	O
(Short recess 9:57 to 10:17 a.m.)	UЛ
and we're off the record.	4
THE VIDEOGRAPHER: The time is 9:57 a.m.,	ω
MS. WEDGWORTH: Yes. Let's take a break.	Ν
break?	Ъ
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20 24 22 20 19 28 17 16 15 14 13 12 11 23 21 10 9 ∞ 7 \circ О 4 ω \sim \vdash whi not Уm down tend typicall concerning board Ф Д Т third rector quarterly മ and t 0 0 \triangleright \circ \triangleright \triangleright ∞ 0 ∞ are Уm 0 quarter, fixed, H all Ċ <u>-</u> guess talk No And Held Not S O Coming Yes, Approximately direct There Typically, (Ву revolves ODE meetings have, bas parties more do have ĭs. are that you know, for in, ma' MS. you know n T STO ე ე-Ф ը Մ generally am but Wedgworth) quarterly than those you usually, half GULLEY: person? Ø there's around NADA, you know, Ьe meetings occur Уd цb and rarely once participat how many цb present understand annual first phone that hour g not how basis, late മ Form year S O three Ф quarter would conference? μ. മ often Ω . മ quarterly ed January, times? മ Ċ because this Ċ ODE μ. NADA, 02 the n T \Box μ. Ф do þе Н Ω that four ixed meetings second correct? holds going probably NADA those and **∑** (D basi coming are times schedule meetings O S telephonic t o Ηt quarter, board with we'11 ;dn g Эd ש Τt **∀** (D Super year 0 † † CDK Ω sit but g

dn

Q. Have you met with anyo other than the NADA convention?
ix, seven times a year.
on, you know, what projects are at hand. Y it could be once or twice a year. It could
A. Again, there's no fixed schedule
Q. How often?
A. Yes. Yes.
people regarding ODE in person?
in person with CDK, do Reynolds people me
Q. (By Ms. Wedgworth) And other than
people: It was Steve Anenen and Ron Workman
A. The only person whose name I
MS. GULLEY: Objection; form.
time you met with CDK, who did you meet with?
Q. (By Ms. Wedgworth) And when you
together, you know, for a half hour or so
place or whatever. We just find time to,
there's no fixed agenda, there's no, you
informal meeting, because we're there
A. Yes. And that meeting tends to
MS. GULLEY: Form.
with CDK people con to discuss ODE?
Q. So normally, at the NADA meeting
Bowl Weekend. It's going to be in San Fran

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash quest been with 0 That Tom the spec don't December most R 9 lephone you tion ა გ <u>:</u>1y infi an 0 marked ∞ \circ \triangleright \triangleright recall, g g and Ω other μ. you would email Ω No, Again, ը. Մ-24th, noA (Ву (Ву calls you December the, the think know, S D . S. have can people, \mathbb{N} this cover ma'am yeah, tend you phone know, SIHave (Exhibit 2015 you Plainti identification. with you that Wedgworth) Wedgworth) \vdash GULLEY: maybe received specifi not? t 0 24th, you know, email remember this оr, know, time their \vdash ff. indicate Ω \circ think you een 59 once have, 2015 . Ω the 9 specifi says Ω this head from SPM document Object Exhibi know, his place this I d I've CEO Do Ф but that year marked that, Mζ you 0 fi las Ω The like ion; document 0 f \Box email over Н $^{\rm M}_{\rm M}$ T \circ software have ODE Workman cover 59 Steve can't but Н I've name form t 0 for Skype Workman don't cover show any ΛM Н emai been before Lloyds recall Н right honestly development, ПO talk email В В believe you what ason 9 d d But Ω Page ent t 0 മ μ. about Ξ S μ. him t 0 \Box

MS. GULLEY: Form. a'am, I don't have, you gh memory of of that ral years back. That's ese are exactly what wen ut (Pause.) By Ms. Wedgworth) There ntioned for CDK: Bihner r. Do you know Mr. Bihn have been on telephone don't know. I think hi don't know. I think hi don't know. but I I	Case 3:20-cr-00371-WHA Document 69-20 Filed 1 HIGHLY CONFIDENTI believe that this is not the board m of ODE for December 2015?
ULLEY: For on't have, of of t back. That wactly what use.) dgworth) T dgworth) T or CDK: Bih or CDK: Bih ow. I thin ow. I thin and I may im, but I	Document 69-2 HIGHLY CON

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Strawsburg.

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2 24 $^{2}_{\omega}$ 22 21 20 19 28 17 16 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash posi any percent ownership Λm μ. Ω again, rela minutes founded controlled Ω Ω enerally time something tion other becaus tionship Ю Ю. \circ Ö \triangleright Ö Ф д Д മ owned joint where And No, ЬH Yes, You ე ე That's That's (Ву (Ву much interest. formal \square by CDK, Reynolds other \vdash inaccurate? with . S. . can CVR \ S • that ma'am γу SPM ma' .S N SIMS H 1ess \vdash venture Уm Λm ი ე put can Wedgworth) Reynolds; Wedgworth) there not SPM CDK elationships GULLEY: GULLEY: than understanding. understanding. because familiar ∞ say that 0 And concerning entered there ODE between Reynolds any percent for Ļt aside and ი ე they Form. Objection; reason when with sure ი ე Now, And into that with CVR, owned have j. t you CDR; that CVR, Reynolds t O that's considerably correct? Although \vdash does Sew CDK? know, Λq the believe form relationship correct? because and CDK $\mathtt{I}^{\, \mathsf{i}} \, \mathtt{m}$ exactly Reynolds also when completely CDK? I'm and the that that not Page dominant before μ. 20 how Ċ the was μ. n T മ Ω j t 215 D D

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MR.

RYAN:

Objection

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 ∞ 7 \circ О 4 ω \sim μ. And assuming decides acquired became know, informal tomorrow contractual customer hat \Box é lership ĊŢ. Н \circ ionship. \bowtie Ö \triangleright 0 \triangleright Ю wouldn' you began aware \Box to pays Reynolds has And And Yes, company Yes H(Ву relationships (Ву \Box know, leave, obligations considerably μ. ĭs. ĭs. ou 0 f \Box tha Ω \vdash ma' a11 .SM What go might മ \Box Probably specified either S T copies Wedgworth) Wedgworth) think S you rel GULLEY: their again, шexistence, Ιt far add \Box a t know, with one has μ. ionship, one bills, Ω 0 f that **∀** (D before Ф ū duration 0 f t 0 this data Objection; wil one CDK Does Wha O μ. do ន្ត្រ \Box you $\dot{\vdash}$ honors characteriz \Box Уm you 0 fi Н-Ċ μ. currently? files with ი ე could, Ω Ω turn μ. Reynolds ន្ត្រ time മ know, something Ω have unwritten, pract tha Ηt form for a11 over S D you Ω with when after 0 f something that long But μ-Ω have \Box know, Œ Н-Ô thei \Box that മ CDK? the \vdash മ മ S S **₩** informal. And any customer came quit you

24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ И 4 ω \sim $\mathbb{Z}_{\mathbb{N}}$ with operations that know, handles Reynolds relationship? \Box Ω . – can't Schaefer' any \circ \triangleright more \circ 0 \triangleright Ö exactly tell that 1. Do other DMS Do Ηt Yes, No ე ე (By \vdash implements (Ву (Ву likely Ω department honestly you not you the could . S. . S . . Sĭ. you ma'am. Ω It's that's where NS. SIMma'am. .SM role? would have inform-Wedgworth) t O Wedgworth) Wedgworth) М Эď GULLEY: GULLEY: GULLEY: providers? happen not n T don't this belief Ф H0f not H1s But the similar would where the reciproc call team? know over for Form Form organization Objection; the that organization Woul Who Ω Between μ. <u>а</u> pract which Ċ some μ. reciprocal n T \vdash \Box żt for happens Д a L an μ. part ш- \Box gets reason, practice? \Box CDK CDK department Ω Ф informal form р \mathbb{O} pract Ō 0 f μ. reciprocal? and under \Box done relationship the occurs who Reynolds? think but, think Page D D tually you <u>1</u>.

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24 22 21 20 19 28 17 16 15 14 13 12 11 10 2 9 \vdash ∞ 7 \circ О 4 ω \sim just been g to REYMDL00263055 504 regarding accurate document have 9 MΥ question t 0 previously ∞ \triangleright $\overset{\circ}{\circ}$ \triangleright Ю \triangleright ∞ മ \circ 0 around moment mark Yes, h T And I've That (Ву Yes, S H Yes Хes Brockman (Ву (Ву $\mathbb{M}_{\mathbb{K}}$. this this writing . S • ĭs. j. t SPM Мау $\mathbb{S}_{\mathbb{N}}$ from ma' ma' MR. SIMS. more? Brockman? never DMS again marked am. am, Have ロで Wedgworth) Wedgworth) μ. ω Wedgworth) that's RYAN: GULLEY: \Box 0 GULLEY: Mr. agreement the your email Ω Document 2017? een 1. you გ ე Strawsburg; COTTEC appears email? Objection thi intent you had Exhibi You Object Ω. ი ე And Previously Bates time received before don't with \Box \Box to here like ion; O 504 р t 0 correct? ре stamped Ō CDK? you're form. that review \Box truthful and 0 Could marked \mathbf{H} show don't responded the you responding you and Exhibit think give what t 0 me ດ ໝ

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ И 4 ω \sim \vdash just know, information, converting this Reynolds relationship R R \Box informal allow rom O ferred any the involves Ю \triangleright Ю \boxtimes Ю t e ∞ \triangleright what, CDK have Ω third \Box cified $\overset{\mathsf{H}}{\vdash}$ customer, The And t 0 Yes relationship And There regarding (Ву Yes, Ω $^{\Omega}$ t o 0 t O ß you you μ. this with . ≅ . did 'n party." h T ¥ ⊕ answer access \Box CDK. ma' ma' MS. MS. about? decided know, the Wе also . Ω this am, am. Wedgworth) the CDK allow $_{\mathbb{O}}^{\mathbb{V}}$ GULLEY: GULLEY: an in that the receive And t O email Reynolds ask need h T the informal informal the informal Do with that rno that when?" they'r them you response both you informal to noti CDK, Objection; Objection; CDK first μ. talk Did case Ω Π Ω software write, relationship? relationship t o DMS relationship Ή, "not to And **∀** (D ication, this that? question t 0 some Н provide that relationship systems with to correct did Mχ "Other form form u, t 0 informal noti more they' work Мау that typical Str Уğ. with ou μ. with than Ω about, awsburg, with CDK assistance CDK you ano CDK μ. Ω you

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20 24 22 19 28 17 15 14 13 12 11 23 21 20 10 . თ 9 ∞ 7 \circ О 4 ω \sim \vdash place have due Д \mathbf{H} \Box р Q 0 Ω outputted customer which rom hei erfec \Box Ö ě fi epartment H Ţ Ω onversion ctually, Cess ďЭ Áq hat К -1 рe might Ф n T \triangleright \circ d represents Ω where remaining 0 the ano the knowledge \Box conversation; Н given, മ there but No. the ccuracy Ω and п CDK tape bе മ systems გ |time there . S . multistep, And customer to that going where \Box currently ш-There And There you when Ω will the മ financial ı. t noti Wedgworth) the then Ω Ω tandpoint tape, there know, But മ actually the conversion the ĊŢ. \Box Ω from ifying Ьe ი L-0 total not a11 generally, Ω take there there and due, and that accounts മ conversion Ω t 0 verified there' മ just obligation മ remaining them place cut CDK that scheduling Hfinancial but And മ Ω correct Ω to an Ω occurs subsequent been you S D describe also then ₩ (P then Ι'm tape receivable that Λq They interdata t 0 know, മ ge not ano obligation what CDK Ţ standpoint മ μ. conversat when don' process Ω Ω And dollar മ wha that n. Ω accounting and what conversa check thei Ω going \Box int Ċ Ф S O position can going actually posi with Reynolds happens nor that amount ermediat Page then t O tion prior And the Ö Ьe takes 22 Ьd

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2 24 22 21 20 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 10 9 ∞ 7 \circ О 4 ω \sim \vdash part been with മ മ and concerning test the are to, balances the providers reports lfter .de customer same that ified nur Ω any marked Ю \triangleright 0 \circ inventory "That's M_{Σ} and out through And That thing. they're other And That's (Ву (ву this rog have give finances Brockman. S D t o . S. to, . S. Reynolds do SIMthe NS. correct. (Exhibit type DMS Plaintiff's to Ф identification.) data and you that correct you Wedgworth) converting Wedgworth) that' do GULLEY: WEDGWORTH: provider; 0 f vehicle receive മ മ t 0 know, დ 円for \Box convers does Mr. thumb \circ Reynolds document 0 the correct the Brockman, What not S P M run and Objection; Exhibit to. drive thes ion vendor inventory You Hμ. customer Move Ω have рф reports the marked that's that Œ μ. programs can And μ. Ω S O R reports ū that .eve 660 t 0 മ other that that \vdash then set management Ф correct form for and they t 0 11 strike 0 f yesterday small they're сору relationship correct show tha t O those general things have Ċ accomplish other hard everything മ thos you document monthly Page reports going to report you like disk what ledge ask

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20 24 22 19 28 17 15 14 13 12 11 23 21 20 10 . თ 9 ∞ 7 \circ О 4 ω \sim \vdash spend VICE bas thi important Ω more οf \mathbf{H} ω Ω a t Reynolds than should mischaracterization. tat tat \Box 0 O company minutes the understand istic Ω ements Ω what' president impact \triangleright 0 \triangleright report ω \Box Ьe 0 company; Ω And And S B R μ. has minutes Yes, Ω That's doing used Ŋ Ø († standpoint g where that but g μ. happened the Ω these been the ma' .SM μ. Ω what what very That \Box t 0 get пO it's μ. correct what Ċ пO Ω purpose μ. GULLEY: unr Ω And financial provides മ reports that thi **∀**0 little their μ. because ut. day-to-day very \Box financial S D happened the μ. ე მ Ω ļ the correct? 0 f And report Н ze. ĊŢ. little company sales Τt used Form uT. show last μ. this μanalysis the S D Ω _ \Box Ω here But five one Ω Ω prepared information. are; that Хq running once not month bearing historical reason report μ. Reynolds again me 0 Ω than years Ēή Ф probably going financi the Ω mont what why for the that whether გ Ļთ თ Ħ ago Ω Н rom Ъ on, μ. \Box what seni S O R much Ω \mathbf{H} company, information And happened correct? only has the Hoverall Reynolds 9 more probably \Box way type 0 spend not say .evel

numbers down.	25
A. Okay. Yes. Okay. I see the third line of	24
Q. So it would be the third line of numbers down.	23
A. I'm sorry that I'm not quite could you	22
see that?	21
see that there's a variance of 354 percent here. Do you	20
Q. Under the "One Time Revenue" for RCI, you'll	19
A. Yes, ma'am.	18
that at the top?	17
"NA DMS Product Solution Data Services P&L." Do you see	16
a Bates ending 712. And this document, at the top, is	15
Q. If we go to Page 12 of this document, which has	14
A. That's correct.	13
prepares these financials; is that correct?	12
Q. And it's there is a team at Reynolds who	11
A. That's correct.	10
basis?	9
Q. And they are sent to you at least on a monthly	ω
A. That's correct.	7
Reynolds at least on a monthly basis; correct?	0
Q. (By Ms. Wedgworth) Well, these are prepared by	UΊ
important for the success of the organization.	4
development. Those are all way more way more	ω
what projects we're accomplishing as far as new product	N
interested in who we've hired, the customers we've sold,	Н
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Where it looks like in January of 2015 there		Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL
2015 there	Page 224	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 262 of 459 HIGHLY CONFIDENTIAL

customers Were _ ეე Do SIMyou GULLEY: 0 0 0 that? DIIW Object 92 ion; sale TOL V O T O Œ 0

that Ø customers

Vers ST ∞ 681 (Ву in T . S . 2016? Wedgworth) 20 Ω ale Ω 0 \vdash G 0

SIMGULLEY: Objection; form

not real Lly What familiar МŽ issue with this გ ს and report that Ω Н don' _ know just

whether whether that that' Ø means മ customer whether number that Ω മ sales number 9

increased (Ву 354 Ms. percent; Wedgworth) you would μ either agree? event \Box

.SW GULLEY: Objection; form

Whatever t t is, μ. _ Ω got "354%" beside it

 \circ 0 S the heading g the left-hand side says,

Time Revenue." Do you 0 0 0 the heading?

. SM GULLEY: Objection; form.

Yes, HΩ (D (D that

 ∞ (Ву . S. Wedgworth) And O S Ř RCI for January

2016 it' Ø 681 versus 150 h. the month മ year earlier

 S_{N}^{N} GULLEY: Form

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16 7 24 23 22 21 20 19 28 17 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash bе Λm \$3 , didn't 77 for t 0 recurring Ι'n obviously Revenue. need won' year 104,000 bе 2015 sorry. Ю· \circ \triangleright ∞ \tilde{o} \Box ₹5 5 I'm have aid, ŭ put old, And Thanks (Ву 910,000 (By (Ву mean, more Sew revenue, the wonder it the too . ≅ . Ms. . S . that and SISINS. SIM\$3,104,000. MS. .SM previous ВO familiar highlight to that's for Wedgworth) Wedgworth) Wedgworth) the Уm GULLEY: Ω GULLEY: GULLEY: Ή WEDGWORTH: WEDGWORTH: GULLEY: for the an 2016, vision somebody record the how increase straightedge, year with Form RCI Move Got Н Do whereas Which μ. S O Going this read Wel 0 Ω you has ე ე Н Well, number, not Do Ht 0 0 -CJ- \Box H \vdash RCI line **л** you T. 0 0 0 മ report highlighted თ თ the 9 910,000 strike. what even 0 straightedge. уев good 3 9 8 are percent? that? going "Recurring it's But previous Д than Н we, that S D \exists versus Уm dо down It' saying but μ. I'm \mathbf{H} age, \Box appears Ω Page Do To used t 0 മ sorry. keep you **U**ը. Մwhich the oke 225 t 0

22 21 19 28 17 16 15 14 13 12 11 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim Case 3:20-cr-00371-WHA you Ω Ω \sim I'm February Ω revenues agreements dramatically? 015 tand-down agreement, igned. alking (D) know, that \circ \triangleright \circ 1 Ю We can you about? Well, Okay. Okay 2015 jumped? Yes, (Ву (By Ms. with looked and the this . ≅ . MR. SIMMS. .Sĭ agreements HCDK describe when The 3 9 9 O S a t Wedgworth) Wedgworth) GULLEY: GULLEY: GULLEY: RYAN: Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL other you the this that Ω ი ე ļ which exhibit referred two it Objection ш-Н Ω a L that Objection; Objection; Objection; fair the ĸ agreements Okay. Well, agreement t 0 revenue stand-down yesterday t 0 to say the say ე ე agreements that, form form form. data for after in that that that agreement, February RC Page 264 of 459 മ exchange ft you're the Hjumped К Page Ι'm the 0 f 22

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overhead much like in a law firm, you know, you have	25
overhead. And the cost accounting imposes an	24
know, the use efficient use of personnel, of	23
very small organization, and I'm very sensitive to, you	22
But you have to remember that I came from $arepsilon$	21
corporations, you know, that sounds kind of crazy.	20
realize for somebody that's used to dealing with larger	19
internal cost accounting. And organizationally and I	18
or how much. The reason why is because we don't have	17
profitable, I have no way of knowing, you know, if it is	16
A. What I'm saying is and that's that if RCI is	15
finish his answer.	14
MS. GULLEY: Wait a minute. He's going to	13
profitable?	12
Q. (By Ms. Wedgworth) So you don't know if RCI is	11
internal cost accounting.	10
I need to explain some about we don't have any	9
A. We we don't have profit numbers on RCI. And	ω
MS. GULLEY: Objection; form.	7
2016?	Q
Q. (By Ms. Wedgworth) Has RCI been profitable in	σ
agreement. Again, looking at this, I can't tell.	4
ones that came to us as a result of the stand-down	ω
come under RCI contracts. I don't think it's just those	N
customers, you know, third parties that that have	Н
Page 227	
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22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 21 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim piece Page SPM the 0 have numbers, don' К μ. 0 † 0 records nformation Ť 7 al \Box ather († . D Ω approximately would \circ keep CDK marked part any Ю And percent \triangleright \triangleright \circ 7 numbers that have have time and Deal. that profit dо Yes, yesterday, (Ву because 0 Ω operates yesterday മ Ηh the the that that . S . accounting = the says, number but And ma'am. Well Do productivity, numbers same \$30 you Ф Wedgworth) sort overall not tha number you "We S D മ Н million S D thing don't Ω \Box μ. 0 f profit think Н מ 0 0 0 are Ω Н **⊗** (D R P records Plaintiff' thing. whole \Box he you that have, were expect t 0 that? S D W (P numbers, from" Η_ you ST profitability SPD know, you entity വ looked \Box ing like you you gon That O Ω know, asked And have why organizational Exhibit know, an know, a t t O because takes "generated Н tha than SOD annua t 0 the show frankly, keep one 7 Ť billing 651, for р probably the Ō accounting, footnote you what **₩** tracked? revenue Page RCI track g don't would Page 22 HQ T 0 f

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inserted.	24
I I didn't ask, for instance, for this footnote to be	23
A I did not. I thought I just said that	22
MS. GULLEY: Objection; form.	2
A. No	20
and/or Mr. Schaefer to analyze and come up with?	19
Q. Is that a number that you you asked your CFO	18
A. Yes, ma'am.	17
interested in?	16
Q. (By Ms. Wedgworth) Was that a number you were	15
it's not a number that I would routinely track.	14
you know, decided he would throw in. But it's again,	13
though, this is something our chief financial officer,	12
A. That that is not not my expectation,	11
MS. GULLEY: Let him finish his answer.	10
Q. Is there any reason to	9
A. That's what this says	ω
MS. GULLEY: Objection; form.	7
revenue of approximately \$30 million; is that correct?	σ
Q. So due to the CDK deal, Reynolds expects annual	Л
they agreed to cease and desist hacking our systems.	4
A. That is the the stand-down agreement where	ω
to?	N
Q. And when you say "CDK Deal," what do you refer	Н
Page 229	
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profitability.	25
accounting, it's impossible to accurately track	24
because we don't have cost accounting. Without cost	23
wrote it is because we don't track profitability,	N N
A. Yes, ma'am. And the reason why that I I	21
wrote to Mr. Schaefer and Mr. Lamb?	20
Is that an accurate statement of what you	19
people need to understand this as well. Bob."	18
front of anyone inside or outside the company. Your	17
variants) in relation to RCI are never to be uttered in	16
standpoint, the term 'profitability' (and any of its	15
blank. And then you write, "Bob, From a policy	14
Q. The subject line, when you write the email, is	13
A. Yes, I did.	12
about January 5th, 2016?	11
Q. Did you write this email to Mr. Schaefer on or	10
A. Yes, ma'am.	9
Q. Have you seen it before?	σ
A. Yes, ma'am.	7
the document?	Q
Mr. Brockman, have you had time to review	Л
document, Bates-stamped REYMDL00045556.	4
been marked as Plaintiff's Exhibit 661, a one-paged	ω
Q. (By Ms. Wedgworth) I'd like to show you what's	Ν
identification.)	Н
Page 230	

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very profitable handful Ω Ω ompany tandpoint close where, 0 Ť ΥŢ the other Reynolds held Ιt Secondly, you company people know, It's which ი ედ Իyou actually run the nobody's ი ე very, know, W (P CEO, completely keep understand business very from which that much dif ը. Մpolicy information me Н like erent and Ф than smal Ф

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim they have being, person. concerning for mumbling t o concerning you know, Q particularly numbers violation company. angerous ccounting do RCI? that don' ∞ \tilde{o} \bowtie \triangleright ablafollowed S being And Who matter \vdash What because about That Н Reynolds for Ω your RCI to \exists Saw know, know there what SPM n T sorry. comment that thrown morale support violation n T profitability someone this how prohibition the that Mr SPM any μ. policy profitable Ω since was around person Hcase, what the Ø മ reason for Schaefer's very n T don't di. where something W (P Bob þ the comment religiously. profit where Ф profitable commenting you ДO the have when you remember whole Schaefer' \mathbf{H} discussing μ. Ω company \Box Ω Ф ¥ ⊕ organization? M ₽ limi might very ou they're n T Ω organizati don' the ļ cost the ;ed regard пO profitable Ω most And Ьe \Box g Wel organization thi profi pro have name accounting h T and unprofitable გ Ի- \vdash Ω t 0 recent fitability . On email any 0 tability മ there Page RCI position Н result, the გ ე SOD 232

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22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim no much agreement \Box 0 procedures, data Ω n T correct? know, discussion know, Since know, . <u>-</u> O Ť tand-down way the RCI track looking anymore \aleph \circ security, **∀**0 talk currently. that's t 0 hurt revenue, Yes, Yes, revenue But (Ву don't (Ву with know, Of and agreement has that forward . S . . S. . over you' ma .SM profit ma'am. SIMBut CDK? and discussion do parti n T been a t ው ප Wedgworth) **∀** (D am. Wedgworth) with GULLEY: GULLEY: that Н specifically during the RCI to, ū endured certainly very cularly დ Ի-And openly \vdash now, first Н you S D made really because n, the thi hurtful Objection; Objection; it's know, \Box over place the n T Well . Ω inquiries ი ე Ф intere relates reason \Box time ano don' you that regards marketplace Of. മ CDK's recovering over Reynolds number data \Box specifically period, less С С whу And level form form 'n follow to attitude the about Д to secondly, security importance, the n T H0 f years the Ξ μ. RCI currently Ω \mathbf{H} from regarding that stand-down years Ċ CDK Page and, that revenue do some the want you you

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GULLEY:

Objection;

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that;

correct?

Q. (By Ms. Wedgworth) And you don't recall who	15
particular email.	14
A. That that's what gave rise to this	13
MS. GULLEY: Objection; form.	12
is very, very profitable; is that correct?	H H
someone made in Mr. Schaefer's organization was that RCI	10
Q. (By Ms. Wedgworth) You said the comment that	9
financial statements are.	∞
goes in the audits goes in which is where the	7
there is a a gross, you know, revenue number that	Q
you know, incomes, to that level of detail. You know,	σ
A. They do not follow any financial statements,	4
MS. GULLEY: Form.	ω
statements?	N
Q. (By Ms. Wedgworth) In the financial	Н
Page 234	
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NS. (Exhibit identification. WEDGWORTH: 662 SPM Can marked have for one

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GULLEY:

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I'm going (Ву to Ms. let you Wedgworth) know that ĭr. I'm Brockman, going to S D reference back? you read,

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specifically	A. Okay. Is this can you point out	your business around August 9th, 2016?	you back, did you write this email in ordinary course of	email in response to Mr. Schaefer and Mr. Schaefer wrote	Q. And on the second page, where you wrote an	A. I'm almost there. Yes, ma'am.	review the document?	Mr. Brockman, have you had a chance to	where you write in it.	questions to the second page of the document where	Page 235	

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- says don't remember speci fically but, you know,
- that's what it says.

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- 23 that **₩** were supposed t O realize out of the CDK deal."
- Do you see that?
- A. Yes

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24 22 20 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 10 9 ∞ 7 \circ О 4 ω \sim \vdash what Ω Ω rno And thi К മ previously, Ф systems come because correct revenue top, he eas tand-down Ω question cions Ω way sno out you 0 m 0 \triangleright you Ω ano and why that over Н realized t 0 call And And That's (Ву That' That' know, believe recompense you motivations agreement I'm to, the I'm $\mathbb{S}_{\mathbb{N}}$ you' the μ. the SIΩ Ω the \Box S_{N}^{N} 0 curious you SPM concerned ADP reason correct correct გ გ years CDK Wedgworth) from that GULLEY: generate "stand-down GULLEY: you're that's planned from asking know, deal for ր Իthat for, S D **∑** (D why the And hacking the waiting t 0 suffered And you're recompense correct. about ΣN I'm stand-down Objection; revenue? Object you t 0 first this one Meaning things agreement"? Ø come interested Schae Ω know, thi d in, ion; referring Of \vdash plac coming greatly Ω pointed That out concerning H (D that ST banditing revenue deal the form form Ţ ĸ one was for Sew out they here n T whol \Box out t 0 0 from ADP' the planne μ. Н SPM one that Ω മ did Ċ Ω the there that the t 0 damage because 0 Q t 0 answer മ

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seculand s	MS. GULLEY: Thank you. Robert he was disconnected. Just letting y MS. WEDGWORTH: Can we go off to THE VIDEOGRAPHER: This is the is 11:02 a.m., and we are off the following the second states.
	(Short recess 11:02 to 11:09 a.m.
	THE VIDEOGRAPHER: This is the beginning of
	Media 2. The time is 11:09 a.m. We're back on the
	record.
	EXAMINATION (Continuing)
	(Exhibit 663 was marked for
	identification.)
	BY MS. WEDGWORTH:
	Q. Mr. Brockman, I'll show you what's been marked
	as Plaintiff's Exhibit 663. Have you had an opportunity
	to review it?
	A. I'm almost done. Yes.
	Q. Are there any awards at Reynolds that are given
	to reward high-performing teams?

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- Q. Dayton is toward the end of the year
- 뵈 Wednesday ۲. No, n T November they're both and ц one മ Friday, 0 f them the μ. Ω following g
- \Box eam with And No that μ. Ω there goes any with monetary that award? compensat ion for the
- award ∞ for There $^{\Omega}$ the there \Box eam? any dia 20 9 benefi ĊŢ. \Box O that
- know, There awards S D Ω മ This there plaque particular are there with noA know, some Ω award, OU 0 f direct there' ano there Ω pri awards ou ດ ໝ N O trip. on В 0 prize individual you
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- prestigious award t 0 get, the department of. the year
- you rec eived from Mχ Schaefer around November \vdash 0 \sim 016

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following to the team:

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We'll do this in a little bit. Let's proceed with	MS. GULLEY: Let's just stay on the record.	Q. Yes. Well, off the record, then.	A. May I tell you the news first?	as Plaintiff's Exhibit 664.	Q. Mr. Brockman, I'll show you what's been marked	Page 241	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 279 of 459 HIGHLY CONFIDENTIAL

17 16 15 14 13 12 review REYMDL00333091 0 the (Ву (Ву document, . S . ĭs. NS. through Wedgworth) Wedgworth) GULLEY: I'11 092. let Thank Yes And \triangleright you know my document M_{Σ} . you. Brockman, Bates S D

relate t 0 the second page Οf the document. questions stamped you

Mr. Brockman, have you had Ф chance t 0

review

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Yes, ma'am.

Ю. Exhibit 664? Did you receive and write this

email п 20 about April 19, 2016

Yes, that Н believe that's what i t says

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim you make not DMS SPA you Bob absolutely something searching Synchronization subject make Features Please alking data edits/comments recognize feel ever Н \tilde{o} μ. further \circ Ω Н Sew don' μ. about, review built Well, for Yes, the Yes, Ω more having my mind, Ω not talking μ. \Box Ω SMM pain enhancements \Box "Draft this ma'am, Did valuable And remember whateve ma'am. t 0 the Mr. fair H(Sync) Data don' The t 0 you Ьe then about and email t 0 attached Bauer do ASB: t 0 Notify policy \vdash released. \Box К Уm Synchronization write But with say did you respond, \vdash remember he New attention. writes O S Review t 0 a11 that Τt feature all draft Data that? \mathbf{H} SMM Features But \Box SPM don' 0 μ. you along Due Ω \Box \vdash Н Sync, the that Ô easi ASB have talking \Box those was, you did Уd "Tom, recall Н point m m has make (Sync) for announcing April 01 and but К not Sit \vdash concerned SMM idea can' Thi about been 0 what the othe gni approve frankly, leave \exists 26. Data \Box t 0 why dealer μ. trying Forward Page tell Ω μ. New not ST 3 H †. Ω Do 0 242 Н t 0

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Marketing, which is the MMS database, we want to do that	25
to improve the product offering for Naked Lime	24
As we, you know, make investments	23
of data that they contain.	22
these databases are are different in in the amount	21
which we sell under the Naked Lime Marketing MS tag, and	20
dealership has. MMS is is a marketing database,	19
There's there's the DMS database, which every	18
A. Well, okay. There there's two databases.	17
MS. GULLEY: Go ahead and answer.	16
Off.	15
MR. RYAN: I object to cutting the witness	14
MS. GULLEY: You can answer the question.	13
yes-or-no question.	12
Q. (By Ms. Wedgworth) And I just asked a	11
A. That's what I'm I'm endeavoring to explain.	10
MS. GULLEY: Objection; form.	9
to make the dealer's data more valuable?	ω
Reynolds was to not make further enhancements to the MMS	7
Is it fair to say that the policy at	σ
question pending.	ſЛ
Q. (By Ms. Wedgworth) Actually, there's no	4
happening here is	ω
A. What that's correct. What what's	Ν
MS. GULLEY: Objection; form.	Н
Page 243	

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review Plaintiff's Exhibit 665?	25
Q. (By Ms. Wedgworth) Have you had a chance to	24
identification.)	23
(Exhibit 665 was marked for	22
show you what's been marked as Plaintiff's Exhibit 665.	21
Q. (By Ms. Wedgworth) Mr. Brockman, I'd like to	20
not to be released."	19
A. That's correct. It says, "This is absolutely	18
MS. GULLEY: Form.	17
development or developer back in?	16
Q. And this is your email reining that	15
A. Somebody in the development area.	14
did you say "developer" or "development"?	13
Q. (By Ms. Wedgworth) You so the developer	12
logical from a business standpoint.	11
is is the development is going to stray from what is	10
And we don't intend to do that. So what's happened	9
own, we're moving that over to the dealership's DMS.	∞
that information, which we're buying and building on our	7
synchronization process, you know, made that made	σ
And for some reason, you know, we have, in the	σ
we have done something that's an enhancement to MMS.	4
What's happened here appears and that's	ω
our investment is is, you know, based upon.	22
so that product will sell more. That's that's what	Н
Page 244	

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Page

16 20 24 22 21 19 28 17 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash well, WĽŻ hackers that "Security D D that down \mathbf{H} Ф involved Improvements"? ime ū Ċ (te, part to achment a t you żt \aleph frame? 0 \bowtie 0 ∞ \triangleright 0 Н \triangleright МŽ dated = wrote 0f Sew This the wanted And Yes, Yes Did here Yes, That email Page bandi HImprovements, ano don' g Ħ Мау written bottom 1 just uT n T μ. μ. you ma' Ω . Ω Ċ 9 \Box Ι'n μ. \sim HΩ Ω \Box research, 0 f Reynolds the what your understand correct 9 write am. think about about sorry look Unless Off the 2019, Уď and attachment, needs email Page Specifi like Мау this = \vdash document somebody that there t o are it' actually entitled t o Ι'm and t 0 that ∞ emai implement Ø figure that Ω cally, these рe not 201 And thi that has which else Yes, \vdash done" did Ω 9 wrot one п you're seeing "Security out security little what we ' ou you 9 ma'am n T გ Իand 0 'n did ٠. R R what Н subject, ը**։** that write the ent wher the talking WĽŻ endeavoring, short Hand that what improvements third-party attached Мау things this Htha email correct 2016 about where they Ф ū

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they has thei this tha know, \Box been can' $_{\mathbb{Q}}^{\mathbb{Q}}$ software, interlopers Ω want hard \Box മ fix to them മ And with when pretty believe what to thei They they ente: they're successful К even come software CAPTCHA they'll have across saying way gone individually, have 1 გ ეt 0 they CAPTCHA, the O S turn can' Н ス な に and software back, which \Box that's det which and you 'n Ω

рlа day 'n they' Ω Ω pretty Ω he end end eri creen 9 U. S and, D **∀**e ש that n T and quickie well, 0 gone Н you know, India, back And pictures they t O O S they You t o message can that somebody what know, get they'll answer they'll You where extreme in. t 0 when know, μ. some Ω all ш. look Ċ \vdash staying you dо \Box mean, 0 place 0 f humans ը. ը. And а С \Box look Λī this the and μ. dn then n, ļ and Ω Ф Ø all an \Box CAPTCHA d L Ŋ India they മ pick ά occurring that night CAPTCHA, the п Ĥ. Ω them К And 9 they'll they thei out a11 some

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ou Ф . ≅ exports Ю· correct? And the could bе additional done, 0f time any kind, limit, from also, 7 p.m. SPM that to

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- \boxtimes That's correct
- \circ And Reynolds implemented these security
- improvements a t the end Of May; correct?

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- Ι'n not sure, you know, what got done when
- I'm not Ι'm not n T the loop аt that part
- \circ Ω μ. \Box К t 0 say, when these security

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- improvements were implemented, your main concern was:
- ecurity?

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Absolutely

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- (Exhibit 666 S & W marked
- identification.)
- \circ (Ву \mathbb{N} Wedgworth) Η_ Q like to show you what Ω

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Page

16 20 24 22 21 20 19 28 17 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim people Мау perceived instance happening improve words \Box det К been "Okay, correct est evi ittle Ω O wrong. get ection . ⊕W 31, ified, marked $\dot{\circ}$ \triangleright \bowtie 0 \triangleright \triangleright ∞ too **∑** (D tha come μ. Plainti our Ħ No Yes 016? And noA What And Yes that that ĊŢ. ano 0 here Ω tight you know, an ' Н S D n. Ω this never the We \Box Ļ; $^{\rm M}$ Ф system Ω Н early **∀**0 our that żt Ч Н bad look did this laintiff's techniques Ω concerns and talks don't email Brockman, understood security Exhibit not Yub in. would გ Ļpreviously цb t O at it's the and, what not understand nur email about concerns actually **∀** 6663 because Exhibi cours have reports that controls, Ф you they' the had you that? perfect and Œ know, you security \Box fact not 0 f you received B K n T Ъе yesterday, \circ there that's doing had continuing know, the **∀** (D anticipated. proces happening that what <u>-</u> make Ф enhancement Hand things and that, chance ω bandit Ω you know that Ħ happening them say wrote the uI S D t o othe the മ For ន្ត្រ I've n T Ω

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these overall \circ major change And accounts you t 0 gave 1 listed to temporary the u, 1 Exhibit exemptions O the securi 09 \Box with tу Ô മ ргосе

† 0 your security improvements; correct regard

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- you bypass therefore know, know, tha \Box 0 ĊŢ. These what this cal these $\dot{\vdash}$ **∀** (D are particular ano people consider support these **∑** (D securi t 0 are issued center рe -ty the Ф and മ change valid people മ complaint and temporary that registe you And
- are major Ю· (Ву accounts Ms. Wedgworth) ი ე that മ And fai the К statement groups 1: Ω \Box \mathbb{O} മ് he 3

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- have Below Snz Bat trati 00 Ю μ. curred Ω \mathbb{O} Ω . On മ Ŋ 남 and Ω. inaccurate \Box you disappointment Ο Do Н don' Major you \Box 0 0 0 when Accounts have that he any with says, who reason the have "Terry changes t 0 expressed believe and Willie tha Ċ

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would not know.	25
A. I'm sorry. I I don't recall and I I	24
MS. GULLEY: Objection; form.	23
over the weekend?	22
security enhancement was put into place, it was done	21
Q. (By Ms. Wedgworth) Do you recall, when the	20
A. Just the people on this list.	19
MS. GULLEY: Objection; form.	18
exemptions to the security enhancements?	17
Q. (By Ms. Wedgworth) are the ones who received	16
MS. GULLEY: Objection.	15
A. Yes.	14
in Exhibit 666	13
Q. (By Ms. Wedgworth) The major accounts listed	12
A. No. Just these specific ones.	11
MR. RYAN: Object to form.	10
that correct?	9
given exemptions for the new security enhancements; is	ω
Q. And so the major accounts at Reynolds were	7
would agree. His opinion would be a good opinion.	σ
A. Yeah, based on Dave Bates' opinion, yeah, I	σ
accounts at Reynolds?	4
Q. So it's fair to say this list below is of major	ω
person.	Ν
A. Yeah. Mr. Bates is a a a credible	Н
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were	(Ву		.00371
not	Ms.		-WHA
informed of	Q. (By Ms. Wedgworth) Do do you recall that		Document 69- HIGHLY CC
these	Do		20 File NFIDEN
securit:	do you		d 12/15/20 TTIAL
dealers were not informed of these security enhancements	recall that	Page 251	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 289 of 459 HIGHLY CONFIDENTIAL

- SIMGULLEY: Objection; form
- announce security would say enhancements it's ano general цт advance policy not

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- \circ (Ву Ms. Wedgworth) With regard t o the end
- they? ecurity Мау 2016 Ι'm enhancements they SIGULLEY: were that ultimately were Form put withdrawn, in place д Т weren't the H
- Hdon't know ĭs. not n T മ position \Box O Ьe recall able \Box Ö say
- time enhancements rom dealerships period $\overset{\circ}{\circ}$ (Ву that that concerning Wedgworth) Reynolds Reynolds received released the Do you the Ф a t lot this security 0 f during \Box complaints ime thi Ω
- notified, went п n T Ma'am, such that S D period Ι'n this not Οf email aware time, right 0 Н other here you than know, μ. Н 0 f would what Ьe
- ∞ You would bе notified?
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- normal \tilde{o} basis Would concerning Mζ Schaefer this Ьe notified g ש g മ

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)	23	22	21	20	19	18	17	16	15	14	13	12	<u> </u>	10	9	Φ	7	σ	UП	4	ω	N	Н
	you wrote, do you try to be truthful and accurate?	Q. (By Ms. Wedgworth) And in all your emails that	A. Yes, ma'am.	MS. GULLEY: Form.	about May 31st, 2016?	Q. And did you receive and write this email on or	A. Yes, ma'am.	Q. Have you had a chance to review Exhibit 667?	A. You're right.	I think.	Q. The good news is the last two are screenshots,	A. Not quite. It's five pages.	Exhibit 667?	Mr. Brockman, have you reviewed Plaintiff's	Q. I'm trying to see if I can outdo Mr. Nemelka.	A. Okay.	Q. Mr. Brockman.	A. You mean me?	what's been marked as Plaintiff's Exhibit 667.	Q. (By Ms. Wedgworth) Mr. Schaefer, I'll show you	identification.)	(Exhibit 667 was marked for	A. Yeah, he would be more likely to than I.

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Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL Page 291 of 459

16 24 22 21 20 19 28 17 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim considering μ. running the one John Eagle recently hearing ПI Ω about there There hat Ó Ω edicated ecurity timatel \vdash erence one here emai store Eagle your ∞ Ю her lady" Ф dealerships μ. ĊŢ. Ø manually Н \vdash has impact, rom Yes Not an K Do you Referring $^{\circ}$ from emai ა ე person remarkable before "This dealerships responding a.m. the this email got several very $\dot{\vdash}$ Mr. being know one CarFax \vdash dear മ and \circ much and am. from Ω leave below number t 0 Agan, μ. remarkable what AVPs the Ω abilities = lady g Мау the your 3rd the worthy beforehand Уm And list June before Of the that 31st earlier Dan emai I party house H customers 0 and പ്പ Support CarFax 0 \vdash and whatever Н Н you yours T usage. Цb She' befor Are And report I'11 g but, emails she' where exception write you then third-party Ω Ó Director quite refer clearly Ω Ω certainly, says, 5am action you are familiar that coming front $\mathbb{M}_{\mathbb{K}}$ Do "Bob, \vdash you t 0 upset Мау 0 she' Вор Schaef **∀**0 page get for Ф her Page uT where This" თ თ usage 31st very this with took John Ι'm \Box S D Ö Œ 2 5 эd ש

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GULLEY:

Objection;

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Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL Page 292 of 459 Page 20

20 24 $^{2}_{\omega}$ 22 21 20 19 28 17 16 15 14 13 12 11 10 9 \vdash ∞ 7 \circ О 4 ω \sim do enjoying Pla and longer regarding ago thi exception; 0 0 there, about marking r K Ť Ť int .end . Ω know цb the ou \circ Ю О Ю happened \circ June 'n. exception, Н and ц but Н longer second don't Н മ that, Yes, Did Not ū †. (Ву (ву (By data Ω issue good გ ს-МŽ 2nd, Plainti don't Exhibit quite . S . . S . . S . you an noĀ page. S_{N}^{N} decision I'm know back ma'am. that (Exhibi security identification. customer \sim Wedgworth) issue," Wedgworth) period 016 Wedgworth) know receive know, GULLEY: serious Н And exactly n T correct? through, Н 9 It' \Box Ω S |≥ 2016 specifically And SPA 0Exhibit this n T 8 Ω let and Ľ. this what was Form based but . ც Yes two WĽĺ me Have Well, has thi 0 Wood marked \circ the show you . te particular the Ω \circ Ω Д ma'am quieted 0 you one what' g this Н two what continues granted state Ж you what SPM the for reviewed Н and Hemai Ω don' Ħ down takes going 0 clearly "quieted area, മ К Н really \vdash this half affairs O'D we. and t 0 know dn 9 but Ьe mos years worthy down ano ou დ 円-Н

20 24 22 19 28 17 16 15 14 13 12 11 10 23 21 20 9 ∞ 7 \circ О 4 ω N \vdash you done, ins oq К \vdash released suspended changes worth enhancements early authorized document "DRAFT estricted 口 S D ήth Н ĊŢ. fective ructi know, suspended \circ bullet going June but that . On Yes, Yes And I'm earlier CAPTCHA (Ву the the \mathbf{H} = 2016 talk immediately Sal hours point through would not . S. they you Н ω Ω whole . Sĭ SIMDoes CAPTCHA Ιf \vdash do That have track write this and Wedgworth) **∀** (D Suspension Reynolds Breaking aware S O R had to GULLEY: presume GULLEY: this made." go \mathcal{C} get around CAPTCHA \mathbb{O} put t O and († week. 0 f that the t 0 t 0 refresh t 0 0 f discuss time News, $\mathbb{Z}_{\mathbb{N}}$ the the n T suspended sometime two Object Objection; June And the what Talk place have Read Ω \vdash second exact Schaefer just enhancements = correct restri your end this with Track." Н \Box been below n T lat Ö wrote date want the 2016 Οf says, page the attachment recollection ction tha form Œ customers. suspended. the May? for security "P1 that form And Ċ \Box here "We 0 fi 0 updates . D Ω \Box ime regarding focus certainly, the have and that μ. Œ Ω Page μ. frame = Ω. Ō d D that SPM Were ი L-2

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20 24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ И 4 ω \sim \vdash why 0 f ref we've the News" Ω Ω have enhancements than ecurity ecurity erencing them way that \Box you Ю \triangleright Ø \bigcirc \circ likely marked do talking **∀** because, had ¥ ⊕ No, them Did This I'm (Ву Yeah, (Ву enhancements enhancements (Ву do think do others two . S . . S . . Sĭ . you S D **U**μ. Ф that ust points .SW \Box does individually. S_{N} (Exhibit what but chance identification. does enhancements Plaintif you know, Wedgworth) Wedgworth) Wedgworth) T eceive about GULLEY: were GULLEY: r t not which, **∀** (D represents not references and, primarily t 0 being do $\mathcal{F}_{\mathcal{F}}$ \circ correct 69 Н there and review ference you and Ω **∀** SPM Form. probably, Objection; Exhibi WĽŻ I d suspended; S O S O And do know, tha the two marked . te references two thi Yes Plaintiff' there like them n T any Ċ . T reasons thi 0 ref Ω data stayed that Η̈́ 1 t - \circ "Sale t 0 for form n T Ω the 9 does erences - 1 emai Ω correct? batches bullet security show there not $\mathbb{N}_{\mathbb{N}}$ why Ω Ø the ecurity \vdash را ۲ Ħ Exhibit Breaking place noĀ **∀**0 likely the d Brockman reasons Ω Page 0 operat more ₩e 3699 20

Because they they cite "Repair orders	<u>2</u>
functionality that they're asking here.	24
you know, insert into our mainline software the	23
special one where it actually, you know, requires us to,	22
an ordinary RCI, you know, application. It was a very	21
A. And I'd like to point out as well, this is not	20
MS. GULLEY: Objection; form.	19
A. Yes.	18
of AutoAlert?	17
Mr. Strawsburg writes to you about this particular case	16
Q. (By Ms. Wedgworth) And you have	15
occurred in this particular case.	14
monthly fee is to them, which is what appears to have	13
they cannot specifically, you know, cite what our	12
A. That that contract specifies that they	11
MS. GULLEY: Objection; form.	10
dealerships?	9
the vendor from disclosing data integration fees to the	Φ
Q. Does the Reynolds contract with vendors prevent	7
Never talked to them.	σ
A. In name only. I've never been to their place.	UΊ
third-party vendor?	4
Q. I take it you are familiar with AutoAlert as a	ω
A. Yes, ma'am.	Ν
about August 12th, 2016 that is Plaintiff's Exhibit 669?	Н
Page 257	
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9 ∞ 7 \circ О 4 ω \sim \vdash providing 10 Н t 0 functionality ashion, bet К dentify Mou 0 product ter = Ьe (Ву data which makes uT upgrade . S . And into better realt 0 O S Wedgworth) them. our we ' opportunities time, the operating გ გ We' doing which AutoAl $\mathcal{F}_{\mathcal{O}}$ μ actually will the ert Ф software lot n T doa product enable the more emai inserting timeli that than the \vdash whale you makes S just Page system 0 20 H മ

WĽŻ ordering terminated termination 0 "They And that That due for are are AutoAlert's Ω t 0 convenience. correct you clearly the ordering fact over contract that that the Hthey' Ω line this the þе $\mathcal{F}_{\mathcal{C}}$ terminated noA К informing contrac Exercise request ano р

they dealerships are passing 0 f their along monthly t o the data dealers integration fee that

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our contract That Ω Now, correct they are That Object perfectly Ω ion; clearly within prohibited thei Ë

rights t 0 disclose the cost 0 f their Οf their

dealer product you noA know, know, they the price are not that permitted, they charge underneath the

ano contract, \Box O you know, publish the price that **₩**

charge them

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GULLEY:

form

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 ∞ (Ву $\mathbb{S}^{\mathbb{N}}$ Wedgworth) noA would agree ۲. th

point.	N 5
certified. They were not even part of RCI at that	24
A. No, they did not. They were not even	23
AutoAlert have a "real-time service drive lead feature"?	22
Q. So at this time, meaning August 12th, 2016, did	21
and look at it again.	20
just pulled it back out of the pile, so I can open it up	19
reference to that that's important is the reason I	18
A. That that's correct. And since there's	17
Exhibit, 669, was on the same day as well.	16
Q. And and if you will note the previous	15
A. Yes, ma'am.	14
August 12th, 2016?	13
Q. And did you receive and write this email around	12
A. Yes, ma'am.	11
reviewed Exhibit 670 Brockman?	10
Q. (By Ms. Wedgworth) Mr. Brockman, have you	9
identification.)	ω
(Exhibit 670 Brockman was marked for	7
Plaintiff's Exhibit 670.	Q
Q. I'd like to show you what's been marked as	Л
necessarily true.	4
A. When it comes to car sales, yes, that's	ω
market; correct?	Ν
that the vendor market is compet is a competitive	Н
Page 259	

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim place your with RO' Уd Н ensure we've bragging know, Good bold, important away 02 **S** many them, God the your \tilde{o} \triangleright customers Ю noti the "completed where Н the 20 O Fi RO's about What No. Well RO' Your (ву Yе RCI DMS AutoAlert; right? μ. fication, ano And highest Ω Ω Ω μ. . S . \Box certification opened provider, email Ω .SM .SM But means they Mou the says That dealers and happening Wedgworth) the Ω. they GULLEY: GULLEY: fact уеt level \Box do ano repai you he Ω മ real process correct? \Box "They're what n T the paragraph have haven't Reynolds they're know, certi 0 f К ი ე time, Objection; Objection; †, orders dot program was dat Well n T 0 fication not means, they're 1 got real מ says, Mou their certainly become just O S g securi even you Reynolds associated with something time but "Take form form has June below tу RCI certified?? designed wha has they'r you appears, been Н .. 0 K 27th, certified away tha Ċ рф say, must you $\mathbb{A}^{\mathbb{S}}$ цÐ മ Ċ the Page you request what opened h T you рф "Take 9 i L

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yet not tha that 7 they they CI Ω ertified are are using certi And O S f i They μ. therefore, . ед \Box Н rom haven't RCI മ മ certified Ι'm lles achieved standpoint saying certification that, the they' Page going fac Кe 261

 \vdash

just they' over order we're And forward, therefore, and \mathcal{F}_{Θ} 02 not opening, not above for data going really മ movement what what third-party because t 0 give quite മ ₩0 • normal that К them Œ straightforward going t 0 thei RCI Ω do മ t 0 this К special dо realnormal means გ Իtime -kindthing RCI that and repai . Of would that' folks that эď Ω

going what basically di: the they're means recting repair that t O happening writing let being Bob order they're them Schaefer The ДO dishonest has μ. into real. Ω anc Mou just 1 ano into and software time When been with main that ano opening somebody ST opened software t 0 Ω mainline that there 0 f t₀ ი ე repai real \vdash ω Ω m feed software no \Box К ime way t₀ orde Ηthem we're And and

given the ROs them opened (Ву something; . Sĭ. real Wedgworth) time ი ე from that When correct them, you = you've write "Take away

 \triangleright The contract S_{N} GULLEY: which Objection; has obviously form not been done

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Exhibit 671?	25
Mr. Brockman, have you had time to review Plaintiff's	24
what's been marked as Plaintiff's Exhibit 671.	23
Q. (By Ms. Wedgworth) Mr. Brockman, I'll show you	22
identification.)	21
(Exhibit 671 Brockman was marked for	20
huge.	19
you know, that was a very, very good-sized one. It was	18
A. Of size, you know, that's the only one that,	17
MS. GULLEY: Objection; form.	16
recall?	15
Q. (By Ms. Wedgworth) Is that the only one you	14
substantial.	13
recall involving DealerBuilt that was pretty	12
A. I believe so. There's there's one that I	11
MS. GULLEY: Objection; form.	10
DMS occurred in the past three years?	9
Q. Mr. Brockman, have any data breaches of dealer	∞
I I would presume they did, but I don't know.	7
A. I'm not aware of whether they have or not.	0
certified?	UΊ
Q. (By Ms. Wedgworth) Did AutoAlert become RCI	4
planned, based upon their actions, we're not.	ω
We have decided rather than to go forward as we had	Ν
yet it it's not finished, they're not RCI certified.	Ъ
Page 262	

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2 24 22 21 20 19 28 17 16 15 14 13 12 11 $^{2}_{\omega}$ 10 9 ∞ 7 \circ О 4 ω \sim \vdash ma' \Box Ф Ω moti μ. Naked area $\mathbb{A}^{\mathbb{S}}$ therefore, company 0th, D O al O \Box Ω am. esperson and basically Lvate been ShowroomMagnet would drive \mathcal{L}^{0} \triangleright Ю \nearrow \tilde{o} Lime \sim μ. people small, 017? \Box that þ Did people Yes Do Not found μ. Naked (Ву it, Ω doing entity? эd you മ \mathbb{N} show quite ¥ 0 you you something μ. t 0 marketing MS. Lime What \Box \Box t o that recal take acquired. something have Wedgworth) Ω receive come dn know, GULLEY: þе yet, probably actually ShowroomMagnet come Ф n T fairly any into test μ. ShowroomMagnet cash the ma'am, system that Н thi u, you direct the for Objection; Ηt likel decently drive showroom μ. Ω payment and And HΩ approved Ω email would dealership which but that മ get the \prec recollecti for product μ. very დ Իtha Ω particular цO and and മ Ф μ. likely form. ი ე Ľ. which Ω Ċ this test And ე ე 2 O tuati clos employed Н part talk e É and <u>d</u>: Habout 1 t ' non fective Ω driv deal they recall Q Œ approve part take Ω t o 0 f Ο product described becaus Ť June get tc the 0 <u>+</u> Ηh And the

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ShowroomMagnet, t 0 acces Did Ω agree CDK Reynolds, DMS t O eliminate with regard the นรе 0 Ť മ data

MS. GULLEY: Objection;

form

that CDK. possible action. And S D But \vdash МŽ นรе think reason Hknow don't გ Իget μ-Н S \Box 1 recall, s S B W doing get Ω readily our data tha you intention Ċ feeds know, apparent μ. Ŋ directly that and to, there' specific where that's from Ω

17 16 15 14 potentially that substantial ormation you start, has potential Hwant you personal know, t o liabilities Ьe moving doing personally data business involved around identifiable with Anytime that people

 \Box they' hat θ μ. Н found there liable ი ე some you kind know, 0 f lawsuit, that they they can can рау the Н

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20 19 judgment

SPM Authenticom? Do you know tha Ċ the dа Ċ מ broker ment 'n. one. Q here

SIGULLEY: Object ion; form

I'm not aware 0f that This Ω Ф general

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	23	22	21	20	19	18	17	16	<u>1</u> 5	14	13	12	11	10	9	ω	7	o	И	4	ω	N	Н		1
Q. (By Ms. Wedgworth) Repair order functionality?	real-time	A. Does Reynolds' service product have	MS. GULLEY: Objection; form.	functionality?	service product have real-time repair order	Q. Good afternoon, Mr. Brockman. Does Reynolds'	BY MS. WEDGWORTH:	EXAMINATION (Continuing)	We're back on the record.	This is the beginning of Media 3. The time is 1:36 p.m.	THE VIDEOGRAPHER: We're back from lunch.	(Lunch recess 12:17 to 1:36 p.m.)	2. The time is 12:17 p.m. We're off the record.	THE VIDEOGRAPHER: This is the end of Media	lunch. Thank you.	MS. WEDGWORTH: Yeah, let's break for	MS. GULLEY: Yeah, it is.	MS. WEDGWORTH: It's here?	documents, lunch has been here about 30 minutes.	MS. GULLEY: Peggy, if you're between	A. That's my belief.	MS. GULLEY: Objection; form.	Q. (By Ms. Wedgworth) Where does it say that?	Page 265	

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A. And yeah. And the answer is, no. There's	25
Q. (By Ms. Wedgworth) Thank you.	24
A. That's a much better restatement.	23
MS. GULLEY: Objection; form.	22
repair order in the Reynolds system as Reynolds does?	2
party have the same ability with regard to real-time	20
Q. (By Ms. Wedgworth) So does does any third	19
say it yes or no.	18
understand that's a little bit long but, I mean, I can't	17
A. No. I think my answer is my answer. And I	16
MS. GULLEY: Objection; form.	15
question?	14
Q. (By Ms. Wedgworth) So is that a "no" to the	13
updating repair orders.	12
application software, actually creating repair orders or	11
But there is you know, there's no, outside of our	10
have some interfaces that allow look-only repair work.	9
A. When you talk about functionality, I know we	∞
MS. GULLEY: Objection; form.	7
functionality?	σ
any third party to have real-time repair order	σ
Q. Does Reynolds currently allow third part	4
A. That's an integral part of it.	ω
Q. (By Ms. Wedgworth) I'm sorry?	Ν
MS. GULLEY: Objection.	Н
Page 266	

12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash no R R you μ. know, ht \Box \Box لم regral Ω outside creates $^{\omega}$ know not time .cal repair part Has an Again, repair process functionality. third repair interf any order μ. . Sĭ you That' third party order the Ω a Q GULLEY: orders know, Ō മ Ω you informat Ф that ĊŢ. what party functionality? a11 know, repair We And, Objection; has the do other ion and That' you Ω functionality, identical order ervi tha because know, Ω . ი help form Ħ 1 functionality, AutoAlert system tha uses access run remembe Ċ the doe them tha Page 20 had ū Ċ К shop The t 0 has Ω \sim μ. you 67 . Ω an

you' Ω 0 thi functionality, ervice Ť Ω access certainly make parties using system. മ But repair some = have \Box that t 0 And functionality actually n T order on Ω terms very the other broad integral 0 f start what thi you that, . Kd statement you Ф part party repair know, call you 0 has know, Н looked-at "repai order okay? that 0 othe Н ĸ orde kind you S D Ó

Ω peaking Ю· about (Ву \mathbb{N} ა ე Wedgworth) t 0 create and The edit functionality മ repai К order? you're

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MS. GULLEY: Objection; form.

μ. functionality, ıke Ω you \triangleright and Ther stated that Ω using μ. there the Only, Ф broad Ω you the know, there' word way tha like Reynolds Ω repair \Box Hdes ıke orde Ω S C oftware . Д you Ō μ. has

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	Page
1 that, because	ecause that is the integral part, you know.
2 That's the	the center functions of Reynolds service
3 softwar	software, okay? Any other access to repair order
4 functions	ns is is much more limited. It's limited
5 look or	look only, that type of access. That's the kind of
9 9 9 9 9 9	the third party had have. None of them have,

1 10 9 June 0 f \circ 2016, (Ву Ms. did Wedgworth) Reynolds implement With regard മ transaction to pricing fee n T

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- with regard \triangleright The to RCI NS. GULLEY: to their Objection; when? vendors? form
- time frame was
- \circ (Ву . S. MS. Wedgworth) GULLEY: Form. Mid-2016
- \triangleright S H that around the date Οf 0 Н the Xtime
- me, O S \tilde{o} Hdon't (Ву . S. . know Wedgworth) the answer You'd t 0 the know question that Ьe tter But than \vdash
- (Exhibi \Box 672 Brockman Sew marked for

identification.

- Ю. (Ву ĭs. Wedgworth) I'11 show you what's been
- 2 marked മ Ω Plaintiff' Ω Exhibit 672

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Exhibit

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MS. GUILERY: Objection: form.	I
omething sometimes called a "ping fee"?	4 80
vendors who were subject to the transaction fee, is that	3
Q. (By Ms. Wedgworth) So with regard to those	N
problem that occurred with Xtime.	1 pr
have update capability that could cause the kind of	0 he
also it only affects those that actually try to	.9 1t
very small number of RCI, you know, customers. Again	18 മ
happened was and that's that and this affects only	17 ha
A. No. That's not correct. You know, what	16
MS. GULLEY: Objection; form.	
implemented a transaction fee?	14 in
Q. (By Ms. Wedgworth) Is it fair to say that they	13
A. No. That's not correct.	Ν
MS. GULLEY: Objection; form.	<u> </u>
ised RCI pricing?	10 rai
Q. So is it fair to say that in mid-2016, Reynolds	9
ubsequent to the Xtime incident.	8
at I thought, which is around the Xtime incident	7 wha
particular document is partially in reference to exactly	9d 9
on the timelines in that, you know this	5 on
ct, because it does, you know, allow correct focus	4 fa
A. Yes. And which is very helpful, as a matter	ω
Exhibit 672?	2 ————————————————————————————————————
Mr. Brockman, have you reviewed Plaintif	<u> </u>
Page 2	

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Case 3:20-cr-00371-WHA В О μ. know Ω Ф le1e that Œ ted \mathbb{O} Tog No. **∑** (D call And each Τt time \Box Н-Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL \Box Ω Ф \Box only മ μ-= \Box Ω record ransaction where μ. they Ω and 1 Н Ф Ф have Ω Н = added don' WĽŻ Page 308 of 459 \mathbf{H} \Box . († \Box Н-D Ω Page changed -back μ. 270 \Box

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- ques ransaction stion \circ (ву I'm fee . Sĭ. just implemented Wedgworth) simply asking n T Actually, mid-2016 Į. there \vdash didn' was \Box ask that
- not the \circ \nearrow case \triangleright The trans answer action t 0 that Н SPA μ. Ω Ť and implement that Ω ed no \Box That's

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- vendors with write-back SIMGULLEY: interface? Objection; form
- It' delet Ω Ф transaction Н Ф Ф only H H they did an add,
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Wedgworth)

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Ю.	А.	increase?	Ю.		Case 3:20-cr-
Do you k	Yes, I did.	•0	(By Ms.		003/1-WHA
now how th	lid.		Wedgworth)		Case 3:20-cr-003/1-WHA Document 69-20 Filed 12/15/20 Page 310 of 459 HIGHLY CONFIDENTIAL
e price i			And you		9-20 Filed CONFIDENTI
ncrease c			approved		[AL [AL
Do you know how the price increase of a quarter			(By Ms. Wedgworth) And you approved that price	Page 272	ge 310 of 459

SPM 0 f മ മ cent 0 Do മ SPM \Box Ŋ you looks percent determined? NS. GULLEY: to 1 like which the Objection; tad SPM Ω \Box Œ CPI says increase plus form here, N 0 Н ш-മ for quarter

year \circ (Ву . ™S. Wedgworth) Does Reynolds track that

MS. GULLEY: Objection; form

A. We do not

Q. (By Ms. Wedgworth) I'm sorry?

A. We do not.

Ю. With regard t 0 RCI cost do those dо the

cost Ω include the developing 0 f interf aces

A. Yes, that would be one of the costs.

Q. Is another cost server maintenance?

 \triangleright Server maintenance, server heat, light, power,

server amortization, server repair, replacement, you

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22 know, the the manpower †† takes t 0 supervise all

23 that Н Ξ sure that there's more factors than that, but

those are the ones that come right 0) f f the dop 0 f

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2 24 $^{2}_{\omega}$ 22 21 20 19 28 17 16 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash what that you completely component bandwidth things മ മ other know, Hcompensation? moving server 'n counting $\mathbb{M}_{\mathbb{K}}$. know, lked would **∀**0 Ю· abla \tilde{o} \boxtimes 0 \triangleright μ. than maintenance packets Н Schaefer's $\mathcal{F}_{\mathcal{C}}$ ¥ ⊕ Are But about $\overset{\mathsf{H}}{\vdash}$ $^{\Omega}$ Because, his fer ი L-Ω the separate because think understand would one had Вор there Ήt $S_{\mathbb{N}}$ compensation We Οf several O developing would Cost but 0 Schaefer' would have S D μ. imagine Н data you salary? _ GULLEY: all any costs, the from system. Ω the accounting, 9 d the know, Ф Ьe other between these times costs considerable hub цb Ф . O Ω 0 f issue the Form would Ø Anything theoretical for important, alary RCI would Οf = transactions It' interfaces DSV **₩** But servers And RCI 0 Ω instance do which costs designed part personnel Ьe again, else not the would T more included, 0 you you're **∀**0 Н standpoint, 0 f have DSV tor the flow рe number don't \vdash R C Internet ĸ for know, Ħ comp, personnel repeat H cost RCI something μ. servic cost aware through Ω you Page 0 cost such Н уев which 0 Ω Н

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terms of numbers of the things to be considered than	build a much longer list. But it's it's much more in	to sit down and think about it for a while, I I could	insurance there's probably -		
to be considered than	it's it's much more in	for a while, I I could	there's probably if I had an opportunity	Page 274	

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done thi Ω (Ву 1 is . ⊠ \Box of Wedgworth) costs with And regard no one \Box Ö RCI a t Reynolds

has

MS. GULLEY: Objection; form

That Ø correct We do not have SOD

thei thei К К \tilde{o} data? Reynolds (Ву . S. contracts, Wedgworth) рау Do Reynolds dealer ώ Н . С С S D Ω part torage 0

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has and К provides μ. Ф which emote \Box product ը-Մtheir ი L-RBDR. automatic -ng Only for charged OWD offering, the And backup n T server, tape with what basi away 0 f n T which Ω լ-† running they certain 'n does This 0f ი ე have മ dealership called ი ეthe fireproof situations. t 0 backups Ή have and the vault an Ω that's Н dat every the employee acronym custome ВÖ that have night for Ф \Box

Ohi К erver esponsibility Ö Ø and search backing park The 0 f RBDR remotely dn offi 1 1 1 . Ce product data accessing And files tha you ĊŢ. know, the into tha dealership' takes our 4 ervic Dayton

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their most recent backup data so they can get back in	will air freight them a a new server and load it with	also provides for in the event of disaster recovery,	Page 275	

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- dealership storage \circ 0 f SO from their μ. Ή, SIMthe Reyndata GULLEY: dealership ი ე that there Objection; has they any their must cost form. рау umo t 0 t o server Reynolds? for
- you ∞ \triangleright Ι'm (Ву . S . not Wedgworth) not quite S O understanding O S Н the Could
- stores cost t o their the dealership nwo data and that doesn' Reynolds \Box ST \mathbb{O} charges RBDR, μ. dealership Ω the

MS. GULLEY: Object to form.

- suo for . t e that maintenance server There And there' repair what Ω and Ф that maintenance replacement COVETS ა ე charge that for covers
- ∞ (Ву . S. . SIMWedgworth) GULLEY: Form 0 that' Ω മ monthly charge?
- A. Yes.

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- Ю (Ву . S . Wedgworth) To the de بر lership?
- A. Yes, that's correct

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- Ö And that monthly charge to the dealership Ω
- rog deal . B K storage 0f their own data g thei К nwo
- server; is that correct?

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GULLEY:

Objection;

form

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dealership

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program

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Page 276 MS. GULLEY: Objection; form. A. No. It's not a charge for dealership it's charged for hardware maintenance for for that server.	Case 3:20-cr-003/1-WHA Document 69-20 Filed 12/15/20 Page 314 of 459

generally which hardware are Ω no, maintenance Again, has under you some the know, contract. requirement fee the There that Each charge are t 0 μ. Ω element software for store identified the data 0f monthly server software S D but μ. fees Ω S D for

dat а storage (Exhibit 674 Brockman SPM marked rog

identification.)

(By Ms. Wedgworth) Mr. Brockman, I

show

you

what' Ω been marked ე ე Plainti Н Н Ω Exhibit \circ It' Ω

Bat Ω number: REYMDL00503332 through ω

Mr. Brockman have you had Ф chance t 0

review Plaintiff's Exhibit 674?

 \triangleright Yes, ma'am. My comment t 0 thi Ω one Ω really

getting down t 0 the weeds Ιt Ω going t 0 take മ while

to talk about this one

 \tilde{o} I'm going t 0 try to Ω tay high-level g

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(/20 Page 315 of 459

don't

know that's

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possible.

Page

this relates to is and that's that we have a a	25
know, caps. Daily caps, monthly caps. What what	24
here is and that's that we're concerned about	23
A. Yes. That That's correct. What's saying	22
Q. Yes.	21
A. Is this July 18th?	20
July 18, 2017. Did you write this?	19
just limit it to that the email on the first pag	18
Q. (By Ms. Wedgworth) And my question we'	17
MS. GULLEY: Form.	16
was on the first page.	1
Q. (By Ms. Wedgworth) I think the one you	14
I actually sent.	13
me a moment, I'll try and count the ones that	12
there's lots of emails on this string. And if you	11
A. Well, there's I've got to go back. The	10
MS. GULLEY: Form.	9
about the time period of July 16 through July 19,	∞
Did you write and receive this emai	7
Q. (By Ms. Wedgworth) Let me try it again	Q
MS. GULLEY: Objection; form.	σı
or about July 19th, 2017?	4
So did you write and receive this emai	ω
Q. Well, we'll give it a whirl.	N

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	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 316 of 459 HIGHLY CONFIDENTIAL
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Mou abbreviated product \tilde{o} called Mχ S D Brockman, CR "Consumer there Reach. Ω ou question That's what pending you 3 9 9

- knowing what's Well, \vdash going I'm no guess Н interest you're ;ed interested
- but answer $\overset{\circ}{\circ}$ but the It's 0 S way Уm just definitely Ċ question works the way ი ე ը. Մthe ask $^{\Omega}$ process this the question part works some 0

part Reynolds 0 fi dealers suite 0 f t 0 products customers t 0 allow email blasts п the

MS. GULLEY: Objection; form. And t 0 the

prior thing.

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- great being not n T Their മ black misused dislocation, Τt email Ιt Ω hole traffic relates very Уď the They serious both დ Һcustomer, don't blacklisted, t 0 issue Reynolds know Reynolds which μ. Н and which გ Իit' product, Ω resulting to means transmitted the customer which żt falls 9 ი ე
- t 0 dealer' limit 0 Ω В О email (Ву reduce . Sĭ. blast? Wedgworth) the number Has 0 fi Reynolds recipients ever 0 д Д tempted

MS. GULLEY: Objection; form

Yeah, prior this had not Okay? But

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28 17 16 15 14 $\frac{1}{3}$ 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash they' you And bottom, somebodythe blacklist direct cont something means what' isabled acting know then В В Ω Ю that mail happened the doing Mr. they മ Ξf (Ву you stupid the provider \Box **₩**@ dealership' Ф 1 you Reynolds Barras ĭs. ĭs. Reynolds know, send S_{N}^{N} Ω .SM μ. address have S T Ω will Wedgworth) Wedgworth) Ω they' GULLEY: GULLEY: tha gets out writes Ф because point says whole \Box product К Ф Ø and have пp They address upset getting the email to that' that bunch Object Objection; one bad you blacklist The And problem called about Ω out blas dealer email გ Իion; 0 f sano they're first And t 0 μ. customers \Box that Naked \Box n T form Ω form blacklisted, addres paragraph an D fai has the And this buying р and К done Lime? \mathbb{O} t 0 the 0 0 0 0 solved they that case, you know say outside Page email n T മ \Box which them ge what the 279

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim you $\mathbb{Z}_{\mathbb{N}}$ emai the disposition number provider n. caps happened blacklist ecommendation egacy цb .] S know Barra that S D \circ \circ \tilde{o} \square what and ტ გ 0 Н well H gni Хes ort Ŋ (Ву late Н Η (Ву (Ву (By Ms. Mou recipients t 0 new Λq \exists When Sew 9 the . S . not Ms. ĭs. t o S D occurs avoid r t t 0 NS. .SM .SM saying, SIMt 0 customers? And when gtop monthly 0 f this final don't Wedgworth) മ Wedgworth) Wedgworth) Ø sure, Wedgworth) put GULLEY: GULLEY: GULLEY: GULLEY: that moment getting ou this the happened 0 f sending = H Ф longer resolution was know you quota മ caps"; problem problem. think in. dealer's exactly, blacklisted know, Objection; Objection; that Objection; Objection; junk time Well Was the S S O п i t μ. _ ໝ there Sew you Reynolds Ω issue what Naked the SPM when t 0 മ that email there you a t respond know quota മ should the form form form form the Lime again, the You disaster †, correct? know, . C wa s tha blas d i emai SPM final product know, done Q SZOM рф Ċ t O limi Ċ. correct? what this when servi daily 1 to correct? these . T HSew this both he Ω Ω

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	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 319 of 459 HIGHLY CONFIDENTIAL
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g suffer Naked \tilde{o} Н rom It's Lime? (Ву the \mathbb{N} МŽ problem understanding Wedgworth) S O that there Naked SPA no Lime quot, did ά not put

MS. GULLEY: Objection; for

- but you thousands \Box ა L- \vdash know, \circ the Again, (Ву Οf . . subsequent company don't Ms. customers one Н know everything Wedgworth) of, don't with t 0 you know, 5,000 this know, And $^{\rm M}_{\rm L}$ employees email. Hyou know, 0 f that's Brockman, the 3 0 0 I'm and issues what going moments I'11 tens μ. was S \Box g that show n Ti Οf done, goe time
- what Н 26 Н- \Box has Ω \vdash Ħ your been going handwriting. previously t 0 focus marked you g the თ თ Plaintiff' last page t o Exhibi ask you
- noA said the last the ast S D T page?
- Q. Yes.

17

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- MS. GULLEY: Objection; form.
- \circ (Ву . S . Wedgworth) $^{\Omega}$ this your handwriting,
- Mr. Brockman?

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A. Yes, it is.

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- Irvine 0 California." And д † the dot And O fi then the the page, handwriting μ. T says, you have "AutoAlert
- цi middle Οf the page "per dealer installation

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23

20 \vdash Ф Ф he typewritten Ω "150." <u>_</u> Ω cratched

increasing the complexity in our application software.	25
time that we do one of these, we run into the issue of	24
you know, get done what they want to have done. Every	23
dependent upon, you know, our software functionality to,	N N
real-time interfaces, which means they're very heavily	21
A. This particular customer has a number of of	20
MS. GULLEY: Objection; form.	19
installation fee for package going from \$150 to \$300?	18
Q. How did you determine to raise the per dealer	17
A. Yes, that's correct.	16
table," your handwriting again?	15
Q. And then "Per dealer install fee is per the	14
A. Yes, it is.	13
that your handwriting?	12
dealers," it's "20%" is crossed out. "30%" is	11
installation of monthly support fees for Canadian	10
Q. (By Ms. Wedgworth) And then handwritten, "For	9
MS. GULLEY: Form.	∞
A. Yes, ma'am.	7
other numbers that are handwritten?	Q
Q. (By Ms. Wedgworth) Is that true for all the	σ
A. Yes, ma'am.	4
MS. GULLEY: Objection; form.	ω
inserting "300"?	N
out to "300." Is that you scratching out "150" and	Н
Page 282	

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13 12 10 9 ∞ 7 \circ О 4 ω \sim \vdash a11 and S S Н μ. And software? application or, he Ω ttle part going too the you Ω everybody goes and bit the going time, complex 0 know, t o tha Н higher complexity In software put t O you Ċ this Now, this part Ω increase ц that price know, It' particular μ. ST 0 f crazy, and Н Ω load there Н МŽ МŽ what you say that complexity job decis because that уев know, ი ე-Ω \Box case \Box 0 all Ο ion-making thi t 0 рe \Box actually really it's them Ω that done kinds n T Н particular believe ano ₩0 • become to required 0 think responsibility application К Ф reques n T doing that t 00 Page custome the about big last 283

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have mus know, and without everything substance cost, And that Of which 1 you †- everybody means know, You know, we've that' likes **∀**0 Ω got just cannot would \Box 0 you increase do, like know, you t 0 the the

pri (Ву . S . Wedgworth) Was one 0 Ť the real-time

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GULLEY: Objection; form

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changes?

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	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 322 of 459 HIGHLY CONFIDENTIAL
	Page 284
Н	they want to know that, really, right at the instant
N	that it occurs, it's real time.
ω	Q. (By Ms. Wedgworth) Did you consult any
4	particular documents, or specific information, when you
σ	made these changes?
0	A. No.
7	Q. Did you speak to anyone, specifically, about

- S D laintiff' 0 Mr. (Ву ĭs. Brockman, (Exhibi Exhibit identification. Wedgworth) Ţ 675 675 I'11 Brockman show Which you what's დ Ի-SPM the marked July been marked 2018
- 28 17 16 15 14 down financial 2018, turn t 0 under there's Page page the 16 Ф RCI 0 f "14%" on package. the numbers document "Recurring for And July which I'm going Revenue" through ng, again, t 0 2000 ask for you going RCI? t O
- Ю· (Ву . S. . NS. Wedgworth) GULLEY: Objection; Objection. From the form. previous year?
- Thank you very much
- from further the 0 ďn top. (Ву . S. RCI Wedgworth) "Recurring" Ηt Ω about "Recurring X L S L lines Revenue" down

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GULLEY:

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MS.		Case 3:20-cr-00371-WHA
MS. GULLEY: Is there a question?		Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 323 of 459 HIGHLY CONFIDENTIAL
tion?	Page 285	Page 323 of 459

that I'm \tilde{o} \triangleright Ι'n (Ву looking . S . not a t Wedgworth) seeing anywhere Ф Ηf മ percentage you start മ g 7 the \Box ;he dot

0f

- the page and go Ω Χ. lines down
- \triangleright Oh, the doa 0 fi the page?
- $\overset{\circ}{\cdot}$ Yes

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(Ву

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Wedgworth)

Do

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GULLEY:

Objection;

form

- the that page you \nearrow S O have. I'm sorry, there's It's "One Н further Sew Time distracted down towards Revenue Λq = and the the highlighting beneath bottom of ı.
- "Recurring Revenue." Ω "Recurring Revenue. Not Кеер "One going Time," down but t o "Recurring." under
- \triangleright Okay. \vdash found
- \circ Do you 0 0 0 the "14%"?

.SM GULLEY: Objection; form.

 \triangleright В В В

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- number Ю· that (By Ms. you would look Wedgworth) at And п does a monthly that basi Ω Ω this മ
- Not really. \mathbb{A} s I've stated before, spend, g
- this particular package that comes out once മ month

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20 24 μ. hal Ω Ŋ -hour z ar В О S D 1ess Н m concerned. Because this I'm much ი Lnot more where interested the action n,

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relationships.	new projects,		
Those are much more important to me than	new software, new hires, new customer	Page 286	

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 Ω Ф highlighted annuali three ervice note \circ asterisks, with .zed Ω are Αt numbers the three Case \$1,034k bottom a t asterisks to that the n T date O É July, very you this (Aug bottom, looked \$10 "Legal page 2017-current) 690k а t where Fees beneath earlier, TTD Н there ... 0 K 0 Ř the costs \$18 Dat are there' total

3M." Do you ĭS. 0 0 0 GULLEY: that Objection;

form

Yes, H

Ю· (Ву \mathbb{S} Wedgworth) Have you looked a t that

before?

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 \triangleright think I've actually probably മ ū Ф thumbed

through, Н probably noticed that one

 \circ Are those -1 are those cost Ω with regard \Box Ö the

current litigation ₩0 ' K (H n T : won

SIGULLEY: Objection; form

specifically \mathbf{H} believe that t 0 Ьe the case Though would

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that would probably Ьe true

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(Ву . S. Wedgworth) Н Ω thi Ø മ Н igure

you've requested t 0 Ьe tuq n T the data

SM GULLEY: Objection; form

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VIDEOGRAPHER:
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ВY SIWEDGWORTH: EXAMINATION (Continuing)

15 14 13 spoke the CBR \circ about relationship Mr. earlier Brockman, today, and other the does informal than Reynolds the ODE relationship have relationship, any other you

relationships with CDK?

 $\mathbb{N}S$. GULLEY: Objection; form

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Ιf you could repeat that list? It's 9

relationship.

19

 \circ (Ву . S. MS. Wedgworth) CBR.

 \triangleright

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0 And the informal relationship you discussed

today.

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22

SIMGULLEY: Objection; form

 \boxtimes That Ø a11 that I'm aware

0

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a couple of questions.	25
reserve my remaining time. And I think Mr. Nemelka has	24
MS. WEDGWORTH: At this point, I'm going to	23
A yes, I agree.	22
MS. GULLEY: Form.	21
A. Yeah. Stated that way	20
on a regular basis?	19
did you it was this the document you would receive	18
Q. (By Ms. Wedgworth) Well, as part of your job,	17
of "in the ordinary course of my job."	16
A. I I don't know what the legal definition is	15
identification.)	14
(Exhibit 676 Brockman was marked for	13
MS. GULLEY: Objection; form.	12
job after December 2017?	11
you receive this document in the ordinary course of your	10
And I just have a simple question: Is this did	9
statement we'll look at. And it's "December YTD 2017."	ω
Plaintiff's Exhibit 676, which is the last financial	7
Q. (By Ms. Wedgworth) I want to show you	Q
A. Not that I'm aware of.	И
MS. GULLEY: Objection; form.	4
longer exist?	ω
relationships before that existed with CDK that no	N
Q. (By Ms. Wedgworth) Are you aware of any other	Н
Page 288	
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0 A. Yes. 1 Q. (By Mr. 2 email is an emai 3 February 5th [si 4 A. Yes.
A. Yes. Q. (By Mr. Nemelka) Thank you. So the email is an email from you to Mr. Steve Anenen February 5th [sic], 2015; correct?
A. Yes. Q. (By Mr. Nemelka) Thank you. So the email is an email from you to Mr. Steve Anenen
0 A. Yes. 1 Q. (By Mr. Nemelka) Thank you. So the
A. Yes.
19 identification.)
18 (Exhibit 677 Brockman was marked for
a moment to read it.
16 had with Mr. Anenen in February of 2013. I'll give
15 to Mr. Schaefer, forwarding a correspondence that
you Plaintiff's Exhibit 677, which is an email from you
a few documents here at the end of the day. I'd hand
12 Q. I just have a few questions for you about
A. Good morning. (Inaudible.)
10 Q. Good afternoon, Mr. Brockman. Mike Nemelka
9 BY MR. NEMELKA:
8 EXAMINATION
7 MS. GULLEY: Just to clarify.
6 MS. WEDGWORTH: Yes.
5 MR. NEMELKA: Right.
4 there is after Mr. Nemelka, right?
3 time, do you you mean reserve whatever remaining
question? When you say you reserve you're remaining
1 MS. GULLEY: Could I just ask you a
Page

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what they wanted to talk to you about, right?	N 5
subtly what could be done to improve things." That's	24
about is CDK how you operate and not very	23
is and as you write, "What they really want to know	22
Q. (By Mr. Nemelka) And what they wanted to know	21
that's exactly what was happening.	20
A. Yes. That That's what it says and that's	19
MS. GULLEY: Objection; form.	18
about CDK?	17
Q. But then they turned and wanted to talk to you	16
taught about the industry.	15
A. They really they start out, they want to be	14
talk to you about CDK, right?	13
mostly young Harvard MBA-types" have been wanting to	12
Q. And then you relate to him that some "bright,	H H
A. That's correct.	10
that you've been holding off on?	9
dealt with." Are those issues the security enhancements	ω
not as I have issues that can no longer wait to be	7
that you write is, "We need to conclude our deal or	Q
Q. (By Mr. Nemelka) And here, the second sentence	Л
A. I believe that's correct.	4
MS. GULLEY: Objection; form.	ω
that right?	N
Reynolds were negotiating the wind-down agreement; is	Н
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20 24 22 21 19 28 17 16 15 14 13 12 11 10 23 20 9 ∞ 7 \circ О 4 ω \sim \vdash phone emai and WĽŻ throwing things busines the happening ammunition. business somebody Ø O . te that how alk right about 0 \circ 0 t o rang, here, about Ω they what $^{\rm M}_{\rm M}$ dart for No Ö Хes (Ву That that These (Ву (Ву person other question, S D = Mr. Mr. how $\mathbb{M}_{\mathbb{K}}$ you the could Ω Anenen, ω -Hbut . SM .SM . Sĭ wants am are дt Н correct that pick told Nemelka) t 0 Nemelka) Nemelka) business, number you GULLEY: GULLEY: GULLEY: exactly Himprove unsolicited nur am \Box 0 "Just they Н them? very \Box \Box alk this 0 dn 1,4 Н the but Form Form And wanted And Ω years things When Form. I've ysnq and, С О isn't Ο type right you you calls me then Hnot you you know Hme 0 fi t o know have what told you say been and And person talk know, providing busines about when noA you conclude and did thi am them, n T t 0 not that Ω. there' know, this not thi you were someone Ω about മ Ω. them talking." mean? you \vdash learned what you uŢ the kind exactly don' CDK the your S S S S S Ω Of

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash very how has you CDK certain **₩**@ Н bе эd Н interfaces aside mostly SZT Look, . Ch hink ambushed Ω talked DMS know certain \Box Ô been nice Ю Ю O has 0 with hedge μ. Н Ċ applications systems Steve all, polite, Well H Ω (Ву (Ву മ about ain't person 0 him. think forever applications you know, what Mr. Mr. fund-type And MS. before SIMAnenen (Exhibi HФ identification.) me, Nemelka) did Nemelka) And Hgentlemanly substantial think O S GULLEY: GULLEY: uI \vdash talked from but SPM you ļ Н personally order \vdash Н dissident Hkind dо 678 exactly couldn't wouldn't you somebody like referred mean under would about I've Form to Objection; Brockman Okay. and 0f with number yesterday Уď for provide need handed that folks. Ф help that CDK. Ьd like stockholders ი ე t O lot that? me instance NoA n T SPM 0 f RCI gunning \Box he him the 0 you can that form and Do Ф Ť Н ¥ ⊕ And you and marked hurry mean, Н pressure other you guy. S D D put I've ש talked Steve particular \Box a t document know, ReverseRisk, that who recall you that t 0 rog you. than Не tried Page about Ω ი പwere know ADP rom መ መ always S D ש when 292 him t 0

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and Automotive 3PA interfaces (Ву applications Mχ NS. Nemelka) GULLEY: forever that And from Objection; you there Reynolds believe μ. Ŋ form some and would Cox CDK, right RCI

you know, Dealertrack ReverseRisk intelligence There have accounting example system and there utilize would മ dealership system are need മ ReverseRisk n T t 0 again, order have that using t 0 รอรก some business Ьe the manner the able to, 0 Н

And dated Exhibit H $\overset{\circ}{\circ}$ will June 678 (Ву give 30, $\mathbb{M}_{\mathbb{K}}$. Which 2015 you Nemelka) დ 円-Ф the moment цb subject I've email \Box 0 handed from you review being you "Cox/DT t 0 Plainti Ron Merger. Lamb, . H Н Ω

A. Yes

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correct relates $\overset{\circ}{\circ}$ \Box 0 Ω 0 Cox thi Automotive' Ω emai \vdash chain Ω acquisition between you 0f and Dealertrack; Mr.

A. That's correc

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Áq already Dealertrack; 0 owned And the Уd correct? Cox combining Automotive 0 f certain and those applications who are owned

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GULLEY:

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash þу you in, SPM К question that Ω Sew Dealertrack benefit other course, orever eally ynergie combining know, Н Ю 0 \tilde{o} \bowtie \boxtimes \tilde{o} kind bad companies work дt Ω t 0 when Н Ω rom that Okay t 0 And Yes, \vdash Would (Ву (Ву any question the Mr. 0 f think And n T Cox right, Mr. you ST Mr. there's VAuto good they SIMSM heart HLamb you \Box and Automotive that's that do recognized Nemelka) know \vdash മ Nemelka) Ω GULLEY: n. GULLEY: will SİZE they and like read have 0 f CDK." മ are combining മ maj AAX what μ. will achieve acquisit H \Box another to those S D uT 9 think Form and Form And You Objection; Ω gus the that Htrike require However μ. transaction said articles \Box wrote what those μ. \Box had some ion, question \Box same [that] Ф Ω there have tha U D matter you \Box t o more RCI such ĊŢ. that 0 industry assets form another Ьe there were make writ And happen interface Hmarket S D 0 acquisition some right? Н think D some this thes μ. normal certainly correct? Ω. here that question? manner amongst power Ō that one apps we're μ. Ω 0 f 0

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A. No. It doesn't, but well, I say it doesn't	25
MS. GULLEY: Form.	24
accounting data in order	23
Q. (By Mr. Nemelka) Does VAuto need need	22
you know, accounting data.	21
In order to work, it relies on a continuing source of,	20
is an an accounting business intelligence software.	19
the ReverseRisk product that we have today, which	18
A. That's my opinion. It would be very much like	17
MS. GULLEY: Objection; form.	16
3PA forever in order to work properly; correct?	15
opinion, is that they would need interfaces with RCI and	14
Q. And it's because they have but in your	13
today but they could also work a little better.	12
and the fact these products continue to work as they are	11
A. That's not necessarily a decided fact. And	10
Q. (By Mr. Nemelka) Right.	9
make these apps really work right." That's my opinion.	∞
is an opinion statement here when I say, "However to	7
A. That's correct. And and this and there	Q
MS. GULLEY: Form.	И
Reynolds and a 3PA interface from CDK, right?	4
interfaces," what you mean is RCI interface from	ω
Q. (By Mr. Nemelka) And when you say "RCI	22
A. Yes, that's correct.	Н
Page 295	

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19 20 24 ω 22 20 28 17 16 15 14 13 12 11 21 10 9 \vdash ∞ 7 \circ О 4 ω N SPM put need hearing Reynolds Schaefer \circ the 그 standpoint, track 79, ĊŢ. do aft †, 1 e accounting 0 \triangleright \tilde{o} \boxtimes Ю О which ∞ \triangleright \circ μ-0 Access ļ nice: that h T Ĥ involving К tnq and S O Yes A11 This Yes, (Ву what Τt (Ву VAuto Authenticom dated ը. Ի-К Mr. Уď from $\mathbb{M}_{\mathbb{K}}$ CDK; M_{Σ} Direction. шшright. ロで your μ. Н \Box that's I've hand (Exhibi system and †. Ω July Schaef denti system Ω emai Ċ മ Nemelka) Nemelka) nice that fte would correct handed accounting automatically u, \vdash Ţ You К correct \vdash ficat had from the \circ = lawsuit 2017, Ьe 79 gap also, can you ion. I'11 came VAuto this Brockman A11 Finished, you accounting 3 9 5 еd what with basis you the give back right the t o correct went that system. preliminary know, July the Bob I've S B M B S with დ പyou lawsuit $\mathbb{Z}_{\mathbb{N}}$ over aside standpoint subject from 1st ש marked you marked മ Brockman? moment But t o number and can agains Ф Bob 2017, it'd tax injunction being for S D sni keep t 0 .ffed Exhi and рe this noA .bit

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management.	It's not not really ours. It's reputation	A. RepMan is really a General Motors application.	MS. GULLEY: Objection; form.	Reynolds application; correct?	Q. (By Mr. Nemelka) RepMan, that's also a	software.	in some cases, those service departments are use CDK	an application that we sell to service departments. And	A. That's that's a service reminder card. It's	MS. GULLEY: Objection; form.	ReminderTrax, that's a Reynolds application; correct?	Q. (By Mr. Nemelka) All right. And IDS	systems.	fairly small number of of dealers that use CDK	A. It is a Reynolds application. It's sold to a	MS. GULLEY: Objection; form.	that's a Reynolds application; correct?	that Reynolds is still using Authenticom for MMS. And	Q. And what he says here in the first sentence is	A. That that's what he's recommending.	Authenticom services; correct?	Reynolds should terminate any of its relationships with	Q. And Mr. Schaefer is writing you to say that	A. Yes, that's correct.

know it had, prior to us acquiring this little	N 5
evidently, fairly recent acquisition. And it, you	24
this was a a result of an acquisition of a	23
A. I think what's happening there is and that's	22
MS. GULLEY: Objection; form.	2
Authenticom to pull data from Reynolds dealers; correct?	20
Q. (By Mr. Nemelka) So Reynolds was using	19
A. I see that.	18
MS. GULLEY: Objection; form.	17
from Reynolds DMS." Do you see that?	16
Q. (By Mr. Nemelka) He writes, "Currently pulling	15
MS. GULLEY: Form.	14
Showroom Management or ShowroomMagnet?	13
Q. (By Mr. Nemelka) Do you see that? After at	12
MS. GULLEY: Objection; form.	H H
DMSs, right?	10
Authenticom was currently pulling data from Reynolds	9
Q. (By Mr. Nemelka) And he says for that one,	ω
buyers to come in and take a a test drive.	7
cash voucher, a motivation, to get prospective car	0
it's a very small one. It's the one that provides a	U
A. And that's a Reynolds application. It is a	4
MS. GULLEY: Objection; form.	ω
that's a Reynolds application; correct?	Ν
Q. (By Mr. Nemelka) And ShowroomMagnet and	Н
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were And \mathbb{O} Ω And acquire ert Н Н O S that cient cquisi ever ified doing therefore, data happy would manner, tion, they business for Ьe t O things were them. 3 9 9 they and classifi going obviously, happening there are 1 Which sinc ed not t 0 are S D Ф \mathbb{O} operated they Ф Ω independently third stupid this But stupid weren't whenever ը Իparty things n, thing something the RCI with going you mos going have I'm Ö ST g O T

ini a11 what response \Box μ. relat lated needs \circ t 0 (By this onships to Mζ Mr. g d NS. 1; Schaefer's done. tigation, Nemelka) with GULLEY: = Authent That's you Objection; recommendation And μ. wrote _com you what a f you form and \mathcal{L} Н wrote they agree t 0 n T termina correct Ċ

Ω when people, μ. Ω hink ued, tanding \Box pref Ω and also \Box u T Ţ Authenti happy ĸ there's 9 comes МY Yes there 0 important with do opinion, about .com O busine And Ф entities, big dat has the , U might judgement Ω Hwithout much Ω think, Н with ص م 2 Ηf that n. add there' that good some the t 0 пo have H₩@ **'** . _ ≅ do Ω way that reason. Н iolks മ ₹ (0 not substance business lawsui 0 f been the par substance obviously Ċ But only ۲ ۲. that cularly .th **∀** (D μ. \Box \vdash goe Wer don't And

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That's correct.	24
A. Uh-huh. (Witness answers affirmatively.)	23
providers CDK, Dealertrack, Automate and Autosoft?	22
provider do you see it in parentheses? He's list DMS	21
to having relationships directly with the DMS	20
Q. One of Mr. Schaefer's statements to you related	19
A. Yes.	18
front of you, sir?	17
679. All right. Do you have Plaintiff's Exhibit 679 in	16
asking you about. That would be Plaintiff's Exhibit	15
Q. Let's stick with the document Mr. Nemelka was	14
BY MS. GULLEY:	13
EXAMINATION	12
(Brief discussion.)	11
MS. WEDGWORTH: I think in this area.	10
information?	9
are from yesterday? Are they sort of that sea of	ω
Peggy, can you tell me where the exhibits	7
All right. Thank you, Mr. Brockman.	Q
minutes.	σ
before I get started. By my count, you have six	4
MS. GULLEY: Thanks. I have some questions	ω
I'll reserve the remainder of our time.	N
MR. NEMELKA: I have no further questions.	Н
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DMS providers; correct?	done in terms of entering into relationships with those	needs you agreed that he should do what needs to be	Page 301	

SIMMR. NEMELKA: WEDGWORTH: Objection. Objection

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you relationships did, \tilde{o} h T (ву fact \mathbb{Z} with Gulley) direct the other others And DMS you t O providers did, enter μ. Ħ into ٠. $\vdash h$ a C correct \Box ent

 \triangleright That Ω correct

NS.

WEDGWORTH:

Objection

 \circ (Ву \mathbb{S} Reynolds? Gulley) Now, Did did the other sued

Reynolds over their relationship with Dealertrack?

MS. WEDGWORTH: Objection

MR. NEMELKA: Objection

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Not that I'm aware 0 f

 ∞ (Ву ĭs. Gulley) Do you know who Dealertrack'

lawyer μ-. ທ

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MR. NEMELKA: Objection

 \triangleright No. Αm Hsupposed to?

 \tilde{o} (By Z ≥ Gulley) Not necessarily. All К ight

You were asked some questions about the financial

information that you received Do noĀ recall those

П ques \Box cions μ-Ħ general terms

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19 20 24 22 21 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash with you Ω deciding, \Box around included enterprise costs effort costs Reynolds ecurity E E †. questions i t fied. Ю· ∞ \tilde{o} associated associated ū done, RCI takes \Box Okay. Well Ö That does issues, (Ву Absolutely (Ву цП you t 0 about system, secure general ĭs. ĭs. how focus not Ω advertising, മ MR. .Sĭ ĭS. about .Sĭ know, probably whole And correct h T with t 0 Gulley) with certainly Gulley) WEDGWORTH: have NEMELKA: 1 ts WEDGWORTH: WEDGWORTH: g n. \Box what one he react some terms, the general RCI; bunch Reynolds' enterprise cost last the 0 0 fi needs Н issue What And h. they requires correct? the 0 f first the Objection couple accounting; the S Objection Objection Objection terms? t 0 executive things 0 f seem cost efforts marketplace system? рe category Wedgworth what data 0 ST Ω H t 0 done, that 0 days t 0 about H security. Ьd correct? to attention, RCI What spend has how you secure clustered SPM Ω t 0 Reynolds' t 0 are have There data asking how And the mine

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much things, Ω that' neces ome Ω sary about one And μd t o of u. would dо the You and from take n T categories know, t O the Ф Н go what dat previous, that' down take ָע security that Ω and മ kind $\overset{\triangleleft}{\circ}$ little enumerate you **∀** (D of, didn't standpoint know, whil you . D talk questions Ф know, list But Ω been the Of f dop

acquisiti choice \circ t 0 . On (Ву invest with . S. the n T Gulley) system security Reynolds Have and you Reynolds made since മ the conscious company: merger Уď

SMWEDGWORTH: Objection

because Ω IBM ahead marketplace company, Ω evelopment, ecurity. totally philosophy very 0 f **∀** (D data Yes. everybody And pleased tight never you that security was S n T Hknow, know come, and it's all else t 0 very, enjoys what the state that originally, S S S S W S S from very software **∑** (D extremely that that Н മ don't was s much security reputation O S മ from design oriented part know far important standpoint IBM 0f S D 1 and h T n. towards that know And the the system the UCS way Н Ħ

polishing been spending the floor When Уm got life And \Box Ö you Reynolds inherited know, mopping this μ. . . house kind and 0 Н and . 1 ke μ. \Box

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to think about n	has two inches		Case 3:20-cr-00371-WH
to think about mops and brushes, we need pumps, because	has two inches of water on the floor. And		Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 342 of 459 HIGHLY CONFIDENTIAL
pumps, because	And we don't need	Page 304) Page 342 of 459

day _ Ω tha \Box _ t 0 vastly And get it' μ. improved \Box Ω into been the МY right goal, Still not kind you know, there 0 f shape since you

your Áq more know, the systems 0 f there fact them that Ω every still Starting there day, more work are from PCs you know, people t 0 .dn do. g that the And want outside that' t 0 Ω invade caused And that

secret n T (Ву 2006 when . S . Gulley) UCS acquired Did you the keep Reynolds that goal and

MS. WEDGWORTH: Objection

MR. NEMELKA: Objection

Absolutely not It' Ω been 1t's known, you

know, that that Sew going to bе one 0 f the goals

 \circ (Ву . S . Gulley) Reporters ever ask X you about

SIWEDGWORTH: Objection

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Reynolds

company?

Ю· (ву ĭs. Gulley) What did you tell them?

SIMWEDGWORTH: Objection

told them were going t 0 improve security.

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24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash you ques you Ω out, μ. public \Box questions know, include finish additional with Reynolds ome inish Н O д † the \mathbb{O} tions estimate გ Իwould customers \circ \sim load 00 wha sue †. your total 0 you \circ dо you and Probably, (Ву (ву you and \Box later Ω On Ьe advertising, when were related simply answer know, . S. . Sĭ . you number know, Reynolds half had NS. the ΜR S_{N} issues over the have you Gulley) Gulley) marketplace, begun NEMELKA: WEDGWORTH: technical WEDGWORTH: from mΥ counting and Ф O S t 0 the acquisition talking H H million here time, invested company? sales were Xtime, you ¥ ⊕ explaining മ issue Since Πn ever ა ე know, everything, told Objection other support about response dollars t 0 1 your and 0 fi Objection Objection salemen' Н keep Ω Ħ occurred, that that <u>a</u>t wouldn't data you that dat executives with about chance down center rno מ time, you'd were t 0 security ₩ O Ω security which respect image the t 0 some time felt рф how unable late answering Ь Ф figure what 8 0 0 surpri much 0 dealing would time, able ďn compelled Ť Oct Page дt 0 he Were to 'n would D D the t 0

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going "Why batch Monday "We've rom some on?" jobs, Ω afternoon checked ano customers system you around know, running And saying, and **∀** "What ¥ O started O S "What μ. G K slowly?" Ω not have receiving running "What and you g "We' done complaints any earth . : : : К Page specifi Φ = μ. 306 Ω

adding, Ф were the doi the was: ⊠as Ф Xtime discovered software CCESS Ω Ω · ga essing Reynolds running, something just SPM the to μ. you \Box n T add, SPM trampling some what outside know, server actually, "abusing" going change 0 f n T 1 SPM μ. dummy, the \Box thos part on, SPA happening h T their and Reynolds would the n T 0 f that adding systems -0q delete customer' the эď in T thei there was records server serve the the bogus and records К SPM permiss right Ω and **₩** customer location n T a t മ But Ηt discovered тq that's the word ion Ф And . @ @ @ wasn' wha ħ; -gh \Box they 0 O Ċ records that \Box And rat μ. they \Box the were Œ SPM **₩**0 μ. \Box \Box \mathcal{L}_{Θ} Ö

Ω were ervers able who to had get And Then called μ. tha \Box came shut ĊŢ. and S S S S W W the 0 f what complained Н cleanup before SPM problem, μ. slowing Ţ went Fortunately, down any 9 the further $_{\mathbb{O}}^{\mathbb{V}}$

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out software Ω al the tha cleanup everal Ë \Box thos there Ō them. these days issue. and servers were **∀**0 to customer And, could some figure ₩e and you found find pieces go records this know, read that bad out, 0 fi **∑** (D the tha records found -1 that Ċ that enti 0 f SPM junk and , Ke **∀** that some cons customer could throw μ. Ľ. Ħ 0 Ω Ť \Box \Box took ent the write Page them file across ST 307

know, had and the meantime, dentify, SSUE ransact had customers 0 customer and Ηh any μ. busines **∀** (D the \Box deleting busines wasn' also continued customers records \Box had problem g just Ω customer some transact t 0 t 0 Ф continued identify And 0 f matter operate, ed O S records these, **∀** ПO and Of whether to were them. you they that operate that's 0 f know, faced would going **∀**0 9 Becaus tha not bogus with actually And ĊŢ. back \mathbb{O} they uT the you the

yet find duplicate programming once **∀** (D the \Box ₽M got ū duplicates you sti Ø done tandpoint S S \vdash know, doing good, **∀** (D ended customer Because everything because the ďn customers having record there \Box W (P had would could that had some situation SPM Ьe \Box from Ö go bad, some back the where but and

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 ∞ 7 \circ О 4 ω \sim \vdash what 0 snapshot before happen. Ω And dele зау ff what you've te/add/change happened. And they 0f What "journalling" that got ήt change **∀**0 after മ means And do change acce j.t n T დ പtha many log ¥ O means ĊŢ. after you to, $_{\mathbb{O}}^{\mathbb{V}}$ take μ. Ċ cases and Ω know, μ. Οf Ω an മ Н go **₩** a É snapshot ter and probably μ. function back created Ω change then and take 0 f going рe **∀**0 journalling **∀**0 the and able take Page can record let' log tell to 309 Ω i t

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where incident × ecords ı; what n T occurs which happens between Unfortunately, ი ე versus n İ business the when time **∀**0 transactions **∀**0 discovered interval nur into from happen the they when situation want the \Box

busines μ. \Box don't \Box Œ you Wе know Ω can' which ones transactions about \vdash do Now, ロで the they automati that stepped the happened Ω fix, logging on, because that, but ¥ (D you you know, there' can't know, Ω fix been **∑** (D ¥ ⊕ can

Ω that Xtime 0 Ω stupid third-party story. S D t o Ιt S S . ტ † Spw programmers that' something ש Ω a11 Ф part rude could like and awakening Ьe tha parcel ĊŢ. 0 happen \Box Ω 0 0 0 ST X that 0 f the

build out (ву this $\mathbb{N}^{\mathbb{N}}$ new Gulley) protection? How much d i <u>Д</u> \Box cost you

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20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash hope they long long SPM they 0 for And access every anything know, these build Λī Ť minor. and then, **∑** (D .1e t 0 ¥ ⊕ could walk could \circ couple log the where application t 0 fίχ God stuf were through have It' (Ву but 0 f and transactions have don't μ. they **⊗** (D But Н Ω . ™ . 0 f the going t 0 \Box course, an build MR somebody .SM Well, S_{N}^{N} never \vdash lack yet keep months do which Ф decided database think, ongoing Gulley) know, program bust WEDGWORTH: NEMELKA: WEDGWORTH: t o email Ļ. you noA have 0 fi them because the keep means had in. where because Tor could know, programming 1 And addresse expense, for that SO how to t 0 Нthat 9 And \Box retention, the Objection go then μ. long make have you these you might Objection .t S Objection not ¥ O **₩** then that Ô interesting you'd and had know, an ongoing allowed do decided, цŢ മ Ф log **∀** (D Ω skill, **∀**0 μ far situation, decision you ri-d **∀**0 t 0 some keep seven have not the transactions also go back don' seven have read/write they Ω part back notice but മ 39868 t 0 \Box expense? years lot S D t o know years the to Page where go could that n T to keep and that los how how t 0 310 Н

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spend the lions? service already bas n T D building Ω Ô far, are the **₩** log-in talking functionality thousands

MS. WEDGWORTH: Objection

MR. NEMELKA: Objection

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- put 700, ,000 probably \triangleright \circ 20 And then (Ву 800,000 . ™S. probably Gulley) there's made the Earlier, ongoing Ф pretty Н had cost good asked hole Н you
- got you've there' t 0 Ω got keep you t 0 żt spin know, You've). the got stuff t 0 sell that g you it, vaulted, you've mean you've
- like the est t imated rec you \circ had Earlier, the -1 the said investment half \vdash and had **₩** Ф asked n T million. just system you what Mes security, the Hwanted you trans script t 0 and you make looked
- A. No. It's half a billion.
- MS. WEDGWORTH: Objection.
- Q. (By Ms. Gulley) Say it again.

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- MS. WEDGWORTH: Objection.
- and Ф day 0ur probably total μ. investment Ø n T the order rog data 0 Н hal security Н മ billion forever

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash with the who process Ω μ. applies dealerships NoT გ Ļbut brokers third-party ecurity inancial Ω ū such, Ω know, liabilities you that Ю . Ю and you responsible 0 directly. they 0 The Н noA know, (Ву (ву according service that's know, Н institution arranging are service the know, . ™S. . Sĭ. same have MS. MR SIThere' certainly, data i t are data considered that Gulley) Gulley) way provider, for WEDGWORTH: NEMELKA: WEDGWORTH: And the certain starts doing t 0 provider, and Ω that broker, financing also what, മ what Gramm-Leach-Bliley, problem O S And dealership feel off they in. How "The responsibilities forth another financial who you μ. Objection they're polite h T Ċ about do Objecti from Objection they must with says accumulate elevator know, the indemnifies noA Ιf დ ⴡact ש the they data company responsi n, feel . On extracting institutions legal that considered unprintab n T that have speech" are brokers the uT uT T about specifies you know standpoint who .ble t 0 the short Ω imples contract and อธก data Ìе മ .. 0 K დ ⊢order what he

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and that's that they have used and Steve Cottrell has	№ И
A. Well, first of all, what they're doing is	24
MR. NEMELKA: Objection.	23
MS. WEDGWORTH: Objection.	22
would give them those names, "hackers and bandits"?	21
what are the risks to Reynolds system such that you	20
Q. (By Ms. Gulley) Why do you feel what	19
A. That's correct.	18
MR. NEMELKA: Objection.	17
MS. WEDGWORTH: Objection.	16
that correct?	15
brokers, like, Authenticom "hackers and bandits"; is	14
we've heard you, on numerous occasion, call data	13
Q. (By Ms. Gulley) If during this deposition,	12
don't know how long.	11
already there, and had been around for a while. But I	10
concerned, when I got there 12 years ago, they were	9
at least 25 or 30 years. As far as Reynolds is	ω
A. I think in the case of UCS software, it's been	7
MS. WEDGWORTH: Objection.	თ
brokers?	И
restrictions against the use of third-party data	4
Q. (By Ms. Gulley) How long have you had those	ω
employees and direct agents.	N
license to do that, your license covers only your	Н
Page 314	

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20 24 22 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash not manager wanted. 0 country, going that Ω know, customer circumstances customer authority don't Chevrolet matter through involved, admitted H CCESS hink ecuri reports nice the Ø he ty. t 0 gaining know that 0 f 0 that this 1 e onsit but n T рф barriers databas circumstance Which, fact, t O dealership മ Н there where S O K qualifi open 0 f t O a11 master the download D he any NoX entrance Well, that the You person hell and Ω that' that's Ø they court lef general kind മ S T'L know, know extent password \Box dealership he \Box Hsecurity Ο Уď him Ω t 0 Ω the don' n T were \Box access used but not 0 fi how how ū the pay. what you manager for charge entirety 1 that \Box entire he listings unusual often this Н n T that name Ċ know know, S a W met the the breach Reynolds kind And And, the onto മ μ. 0 f рig under Οf Michael. third-party fj: Ω name that customer gett п Не he company of for, that you d his and that that Franklin, SPM worry could to he Sew gur he "hacker softwar sounds what know, lapt post you that dealership had password the Internet files Уm passed nur that Hgo. know \Box Ω worked, like there the general we've hacker and Sew irst any Page 0 f And maybe that Эd kind μ. he had 315 you eр Н

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24 22 19 28 17 16 15 14 13 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash ano they had you're privileged Ф Д And FTC everything. understand completely were dealer and names about dealer ttorneys Reynolds they thei door Ö talked the and 0 Matter what but and \Box H К alking \Box called advice (Ву guns and FTC information fortunately unknowledgeable wa s information. what said, t O g . S . 0 f ₩ O THE S_{N} 0 They're him earth drawn about from the you're You're fact, you Gulley) the don't WITNESS: it GULLEY: there some FDC 9 the he SPM one next know our SPM never not know talking not, had more, were, 0 f privacy very Ι'm thing computer But And posted fortunately, Okay 0 f talking done much oh, been sorry, put Н shocking you he what the one about. don't okay ¥ ⊕ people; but about said, that around Н FDC know, S O about 0 f guys, a11 The mean, know, 212 312 you' you know ano were came ₩ (0 dealing NoA happened dealer "Look, people i them **∀** (D ant can't they μ. К they'll got whether outs and . Ω need not down tha have itrust a t Ф was, Н asked with talk Ċ happy, whose good on Page to right? HTC know they they And like that the about the 316 9 S D

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20 24 22 21 20 19 28 17 16 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim SPM T'L 00 caused mind Ф nothing മ investigation break Ċ a L whole . 7 any the fault involved? d t O about \triangleright \circ \circ abla ∞ 0 \triangleright \circ loose ST 0 Ф μ. pile, _dea think Н wrong. 9 ₩e breach? Well What No? No. (Ву You that can that 0f and involved obviously Franklin? . S. cannot simply into SPA MR. . Sĭ about, But .S⊠ ¥ O kind having What say, The then Gulley) obviously We it NEMELKA: WEDGWORTH: the WEDGWORTH: 0 f you reveal computer "Well, t 0 †. doesn't better any started Œ what H process convince fect know, would But kind privileged what Ьe Objection On Н take system was Ьe spending wha Objection Objection 0 f prepared something you O the Ļ. really Ċ much medata the Of FTC μ. what Ω information 0 f ש broker the not not expensive." for computer happened that bunch FTC' the leap a11 n. smart **∀**0 involved any of money, \mathbb{O} Page hell Ę did n T system that way mУ And \Box

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4 ω \sim \vdash (Ву . S. (Exhibi (Brief identification. Gulley) Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL discussion.) \Box 274 $\mathtt{I}^{\, \mathsf{I}} \, \mathtt{m}$ SPA marking marked and handing Page Ö 318 you

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7 \circ О plainti and Defendant's defendants' Н Н Ω skipped Exhibit numbers 274 numbe are S Less widely Ours you disparate think **∑** (D the did not plaintif the

discussion.

 \circ (By . S. Gulley) Take മ minute t 0 review

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incident What გ ⴡwhat . Ω this about, the

De Н endant' Ω Exhibit 274?

MS. WEDGWORTH: Objection

DealerBuilt DealerBuilt, გ Ի-Η̈́ \vdash can recall what happened

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9 ecords , 0 that were they exposed know 0f you know, individual customer age 319

gotten Ω tha apiece exposure autious O the Ċ thei into ıt person whose you about, К you costs data the know, know, And you you wrong has tha their data been per know, the \Box hands meant name H H SPM personal exposed . R what Οf \Box exposed t 0 tha ω -1 some Ø Ċ and end happening. the information bad they and Н in μ. registered rst people any t O should cost kin Becaus may <u>`</u>Д μ. р them Ω 0 have letter Н -CJdat Ф

with μ. what automotive wake- \Box SPM ďn that the Ф calls FTC, bunch cost business 0 f which And uT. And Ф then, thi really that \vdash Н Ω particular think after ¥ ⊕ Н large don' know thi that, \Box data Ω about have SPM situation, you breach one any start knowledge 0 Н n T but dealing he the Н Н μ. ĸ эd ŭ \Box 0

Ω publicity. tha internally. kind could about hat etting 7 Ω -0 Ω bad Ť р Ō the because like ideas happening people case HuT You think Because none And, never Ω tealing Hhere iπ Of they' think you ¥ ⊕ the hear them \mathcal{F}_{Θ} always know, they' money banks ever concerned about R R that' have from where happen concerned those Ø the to they about certainly remember banks Now, Hhave bad don't about maybe worrie the think μ. \Box Ω

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& 12 F	that it's not the dealer. It is t department head who, short term, y
	Page 321
<u>'</u>	that it's not the dealer. It is the it is the
	department head who, short term, you know, wants to get
	his what he wants to get done, what he wants to get
	done. He doesn't care about security. He may not even
<u> </u>	be around that dealership next year. He has a very

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on, what we're trying t O prevent you know, the dealer

says "Okay, **∀** understand."

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(Exhibi \Box \mathbb{N} 75 SPM marked for

identification.

Ф Ċ that \circ (Ву Ms. Gulley) Have you had Ф chance t 0 look

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you're \circ looking (Ву $\mathbb{S}_{\mathbb{N}}$ a t Gulley) the attachment And **U**-ST T for ;he record

NEMELKA: Objection

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you that know, can Ω they go their want back computer and the get report i, μ. ļ and run the sky മ Ċ 1 and മ specifi pull μ. Ω \Box 0 μ. me Н Н where to

wall Jus thi the μ. mean, \Box . Ω T you worst 0 f Ω \Box 'n know rno Ω _ \Box ารค right one Ω computer ever S O here this here S. Of found one' history when you remotely thi Ω **₩** know, O S . Ω have where bad, one unattended just മ interesti **₩** you 1 beyond have got place batch цp gn. the 0 example ДO jobs pale Hthe mean 0f Н

tuq where numbered that S O R Ц the the Harrow want you record, SWOY (Ву S . S . going are O S Ht 0 **'**∀e Gulley) numbered one, down look put two, nine an Look 1 arrow three spots Row a t a t ر. 9 the four, "Superior Maybe guys, the five yours I've you and just That aren' Ω \Box

A. Okay

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A. I think that's Phil Bautista

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MS. WEDGWORTH: Objection

MR. NEMELKA: Objection.

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20 24 ω 22 21 19 28 17 16 15 14 13 12 11 10 20 9 \vdash ∞ 7 \circ И 4 ω \sim take ω back break running. server, Reynolds four this frequently same The ש and time? \circ Ö space 0 break. you time HThey technology? Ф Yes Ηt Every (Ву (Ву (Ву Ξ And half SPM S D going know, . ≅. . S . . S. μ. you're are MS. MR. NS. Authenticom? Ω . Sĭ MR. HHH (Short We two μ. Ω hours \Box SGulley) Gulley) √e Gulley) to WEDGWORTH: GULLEY: WEDGWORTH: NEMELKA: 16 shouldn't NEMELKA: VIDEOGRAPHER: overloads and accessing 0f p.m. still pretty been recess മ Ф the day worth half What A11 going Are эq worst We're Let's good. have 1. ω Objection Objection this .. |g minutes they right. Objection Objection . თ impact Ф when go kind Of This anything to Even 0 f while Reynolds Н Н off ω didn't the compute മ can And are Н ω μ- \vdash Ω And without the really Д the record like S S they m. that when system record accumulating catch that end time good that have n. **∀**0 0 good аt the Н and come Media ПO

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EXAMINATION

(Continuing)

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BY MS. GULLEY:

 \Box Xtime don't O the 0 Ω think ituation transaction When Н **∀**0 circled that were Н \mathbb{O} you \mathbb{O} around talking issue described, t 0 that about this ĭs. how Xtime question Wedgworth does earlier, that SPM The relat

per-transaction before-and-after enti extra information, ty. \triangleright work like The we've Xtime what basis the got images doing that process t 0 simply does add/ do. And 0 f change μ. Plus because Ω ₩ O that did 0 /delete we've Ť generate $\overset{\vee}{\mathbb{O}}$ 1. somebody believed got write-Ω \Box O മ save bunch that the O Fi

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have that Ω tually Ф Wе cover-blanket using put <u>1</u>+ And that do therefore, increase ПO that the Н acility μ. third t o \Box would cover parties Ьe the unfai Cost tha ĸ Ċ just $_{\rm f}^{\rm of}$ are doing to

Н D D has ∞ been Do you d SIknow the WEDGWORTH: number what the 0 f write-back impact Objection 0 Ť tha \Box ransactions \Box t r ansaction

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MR. NEMELKA: Objection.	N Б
MS. WEDGWORTH: Objection.	24
permitted?	23
recipient of that data from the dealer, is that	2 2
Q. (By Ms. Gulley) So if Authenticom was the	21
themselves, we're out of the track.	20
as we're concerned, you know, once they do it	19
transmit that data in that dataset outside in as far	18
Instead, it's sent to disk and then they they	17
instance, run a print job that's not ever printed.	16
what they can do is and that's they can say, for	15
A. We have a a data reporting facility. And	14
MS. WEDGWORTH: Objection.	13
they can provide their data. How can they do that?	12
talked about system access, no automated access, but	11
Q. (By Ms. Gulley) And so on the one hand, we	10
A. Yes.	9
MS. WEDGWORTH: Objection.	∞
give their operational data out to third parties?	7
times, Reynolds reporting functionality. Can dealers	Q
Q. (By Ms. Gulley) You also mentioned, several	Л
A. No.	4
MS. WEDGWORTH: Objection.	ω
Does Reynolds allow that?	Ν
party says, "Oh, no, we're the agent of the dealer."	Н
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A. No. Only for specific security policy issues.	4
MS. WEDGWORTH: Objection.	ω
exempted from all Reynolds security policies?	2
exempted user IDs in various contexts. Are exempted	
Q. (By Ms. Gulley) Ms. Wedgworth asked you about	0
it was completed, satisfactorily.	9
stand-down process had been had been completed, which	∞
A. No. It was an agreement until the the	7
MS. WEDGWORTH: Objection.	9
MR. NEMELKA: Objection.	Ŋ
years is 2020. Was it a five-year agreement?	4
"five-year agreement." The agreement was 2015, five	ω
no, I'm sorry, it was Mr. Nemelka had called it a	N
Q. (By Ms. Gulley) Ms. Wedgworth had said	Н
Page	

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MS. WEDGWORTH: Objection.

A. Maybe Kelly Hall.

Ю· (Ву Ms. Gulley) right. We've also talked

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Gulley)

Who's

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about DMS competition. Do dealers change DMS providers?

A. Yes, they do.

Ю· Do dealers switch away from Reynolds?

A. Yes, they d

Q. Do dealers switch away from CDK?

MR. NEMELKA: Objection.

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information and put it into data records. And that	run a series of software programs that parse the printed	assuming, you know, competitive system, and then they	disk. And then that disk or thumb drive goes to the	but don't print them off. Instead, you send them to	and I say "print off" you run a bunch of print jobs,	that's that you you print off a bunch of reports	you know, relatively simple. What you do is and	A. That's correct. That process is is really,	MS. WEDGWORTH: Objection.	and Cox; correct?	leave Cox Aut are able to switch between Reynolds	Q. (By Ms. Gulley) But dealers, nevertheless,	A. Correct.	MS. WEDGWORTH: Objection.	that right?	Automotive Dealertrack with respect to conversions; is	you do not have an agreement between Reynolds and Cox	Q. (By Ms. Gulley) Now, you had mentioned there,	A. Yes, they do.	MR. NEMELKA: Objection.	MS. WEDGWORTH: Objection.	Automotive Dealertrak?	Q. (By Ms. Gulley) Do they switch away from Cox	A. Yes, they do.

20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim very Mr. how Z S cus tha with Do programming μremember other dealer; letter customer amiliar Ω you \Box tomer Lamb Wedgworth the simple \tilde{o} \triangleright ∞ 1 \bigcirc \triangleright costs that how recall t O μ. that wrote Ŋ Yes with switching (Ву Yes chart (Ву That's Ω (Ву **₩** Ö Hendrick you would For Ø that just 0 f programming . S . ĭs. how ß S dо •∙∪ marked that NS. . SM μ. Ηt ending \Box Ф instance right And he accurate? ¥ ⊕ doing Gulley) Gulley) Ω Gulley) now, \Box conversion WEDGWORTH: WEDGWORTH: away Tab a11 discusses discussed area Ι'm convert convert Plainti n T you with ₽, ш-0 f from looking \Box 023 (Inaudible μ. Slot Now, Now, Let gave Н questioning? print any away . Њ $_{\mathbb{O}}^{\mathbb{V}}$ മ മ between <u></u> \Box me Objection. Objection n Ti an would Ω Ш Ω different dealer convert non-CDK, Ф hand 657 Ċ from really this jobs, example this noA drop you you Reynolds you other draf This know, Ф very and DMS expect n Ti and you know, Dealertrack what 0 f this \Box sal are than it's MΥ provider 1e Ω simple \square Ţ the Page page very Ω Do മ dealer draf CDK you that 332

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14 $\frac{1}{3}$ 12 11 10 9 \vdash ∞ 7 \circ О 4 ω \sim do and key. 9 greatest process. 0 into learn Ť that Dealertrack, actually Reynolds 0 how And you Yes variable Yes. (Ву t 0 And it' know, . Sĭ. new take Ω NS. Н SMt 0 more You you Gulley) have the n T WEDGWORTH: WEDGWORTH: have their know, I've อธก important know, any kind the dealership an the courses tried ш-Does **%**⊕ education Н same new ¥ ⊕ would 0 f Objecti t 0 than anything Objection sort Reynolds were software pass personnel make conversion go department Οf converting . On thei the through cost help point Я And are Ω ი ე t 68 customers the and that S C whether motivated them Page that and same ¥ (D 0 f Ω the

have support onsite people installers S D well and **∀** (D have remote install

0 (Ву . S MS. Gulley) Would you consider

superior or inferior to CDK's?

MS. WEDGWORTH: Objection

μ. nature superior Ω 0 Ω Ĥ Well But ₩ @ | 0 Н $^{\circ}$ that's Hano think not business the that you cheapest without know, model that question. What Don't **∀**0 want that's try We're to t 0 the Ьe

 ∞ (Ву \mathbb{N} Gulley) Turn back t 0 that Н ĸ Ω \Box page

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SIMWEDGWORTH: Objection

MR. NEMELKA: Objection

Really, really, you know, unhappy thing.

They announced isappointed they that issued they're termination going t 0 notices CDK. And to ST SPA very

CDK? \tilde{o} (By . ™S. Gulley) Did they sign ש contract with

SIMWEDGWORTH: Objection

 \triangleright Yes, they

 \circ (Ву . S . Gulley) SO they switched t O CDK?

ĭS. GULLEY: Objection.

 \triangleright They didn't. They didn't switch yet

NS. WEDGWORTH: Objection

They decided t O switch. They contracted t 0

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(Ву

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Gulley)

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switch. And then which ը. ը. Ф further, you know,

longer story they decided t 0 switch. And then, S D

the switch began, żt began firs \Box with മ very small

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dealership that SPM basically, മ new start And they

a11 new people and Ļ. was you know, therefore

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim okay. SPM that Hendrick, opcode dealership р have dramatically order three "opcodes." important because disaster Hendrick' ave 0 ttempted, ecause , ke deal മ dealerships -digit SPM that that time monster there's structure 0 f ership 0 f from Ø elearn that which has n T n L which the headquarters the And number Each the typing. Well, the Toyota There data Ф way † 0 software, 0 opcodes had the SPM рe service tremendous dealership another And conversion second you And not done. opcodes μ. there conversion, t 0 And dealer, Ω the When could typically, Ф are been standardize not μ. department, dealership process dealership, goal had . C And you're And amount move accomplished has whole standpoint which because been μ. Because the . CT they're not 1 kind SPM that 9 Ф шopening 0 f цb opcodes ი ე T purpose opcodes because that service 0 f which Ф the Ω keystroke-kind and 0 f დ ⊢μ. initiative withi unique Н Ф the buil very they reason two-digi 9 dn he But an μ. †, Ħ short amongst Ω 0 advisor systems, tuq would eyesight Н absolute t O Ω converted repair very anything their Page en. to called each Ċ inside Ω not that from al Ř t 0 0f not ω own 0

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new the what that service ransferred new ever opcodes unti 3 8 6 t adviser opcode \vdash he's 0 he Н opcodes Ω into finally \Box crippled, μ. Ω an are environment memori And from because .zed and the you he he where place has has know he' there's \Box t o O keep whatever been Page doing ω

change who system that' ime talked that the Unfortunately opcodes t 0 Hendrick who They about п wanted decided the what and day to Н avoi don' 0 tud Н and conversion Q the \Box tha know upshot . T and the orever CDK t 0 SPA exact the let and 1 new them and a11

morning their always know hat to-do bring 0 S you <u>†</u>† there' Ω list know, always their And Ω over you the Ф cars lot been bring the result 0 f in, g weekend your and Monday SPM right they've car and mornings and into typical kind that you do this know, people of made Monday that В you

who opcode, absolutely know, were Ø which paid расе the crippled, just, d D service The incentive Which process you because advisors meant know, 0 f programs †t that opening really had Sew the t O a11 they made മ look repair new the d L ďn Ċ opcodes Q proceed technicians not order get was and a t

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19 20 24 22 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 21 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash with thing lack and And they happened years n T they 0 work changing should make about :a11 echnicians aying Η̈́ arms λq you addres the 0f † 0 for were that В 0 have noontime, Щ they do percent know, experience, He help opcodes quality Obviously, more, patient Ω which Ηt converted until Success said, the resisted SPM expected They some And The went The Н But and orgiveness more group, 0 f you Ω ць almost "Guys, 0 f lost then with second everybody, techs out they 0 fi absolutely t 0 the personnel absolute because there this this them had know, data some half ST whi the t 0 another were noon said, f j \vdash day, idea .rst SPM month . Ch promise buil the things new conversions -1 the Ф just he $\mathbb{M}_{\mathbb{K}}$ dn Н day been true i t day' "Okay, \Box experienced interesting (system think, And in, CDK than did. rising 1 echs Hendrick didn' there not you, thi wailing. Ω with they H рау conversion because **∀** were you've Ω and they t 0 had And \Box nstal SPM has you're crazy Hendrick get were understand go And hе needed μ. മ absolutely personnel were Ċ lation Ω Ф thing right ome ever And any they not idea lot did ط عل going \Box group \Box \Box O S bette E K N happy this t 0 age Ф \mathbb{O} \Box Ö Were bit smart he Ω come dn 337 \vdash

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2 24 ω 22 21 19 28 17 \vdash 15 14 13 12 11 10 20 . თ 9 \vdash ∞ 7 \circ О 4 ω N puni and you had guy \vdash 0 К others, Ф CDK the Ω hand how \Box "Mz "Bob, installer ス で : S D μ. Ť ealized Ô O . D contractor?" \Box person folks, are been цs. he his been conversation, racing. = 呂 Д roposal And Н ន្តប you him had Rick's you? you know, Ħ one that with quenched and, you he ა გ not know, we'd once young he' he I'm He's he CDK?" ΛM know, μ. And And And "Oh, and you gotten Ω like Ω Ω he name you had മ "we've kind the he the one that the മ person called S S know, really? contractor went And after, very been t 0 Ω know, Of გ Ի-Ήt next answer forth. person 0f Ω got he come around Rick and, μ. simple talked "the" got ļ promised he day walked up you And Rick' Okay he problems μ. back. answer asked, Hendrick. the you And Ω he Rick know, guys. and Ω t 0 person Ω obviously, very cal he know, മ same just How him, the Ω Hendrick' well, hero the talked t 0 . ed And low-key "Well long bes answer Ιf n T you kind Ф รุก You ini figure he you "How \Box Shook ďn have know, t o tial "Whatever ins only Sew I'm 0 kind Н and tall long CDK the several course μi Page And ij talked you not talking get "Well, 0 გ დ kind team he have ω been with ano 0 f to u,

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changed was S Ω Ω that know, oftware onversion nothing wrong Ω CDK ' probably opcodes ano Ω with stories wrong software Ø And oftware one the with SO tha 0 f people had they \Box the the had I've nothing came mos hardware nothing ever Ξf \Box back. they amazing, to heard do t 0 had And, Probably do with and รม โ you with you †- T know, OU not know and ш. \Box There that the You

the first \tilde{o} (Ву place? $\mathbb{S}_{\mathbb{N}}$.Sĭ Gulley) WEDGWORTH: Why Objection you lose

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ᅜ for banker Brown CK 30 over μ. some-odd Ω Well He the nominally, was years that years with and Ω Bank the മ very Не knew president 0 f retired. him well pert America inent μ. And Ω there question Ф requi he n T had .red Charlotte banked Εd

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cal that he think more knows Ω time what nothing not മ racing, he been little experienced about And wanted bit and Rick he' computers he Ø about decided dо definitely automotive hired dealerships Ω. he H Q that Не wanted Brown not probably he executive what wanted but, to And go you would you do 년 여 \Box Áq O know, spend Brown now,

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Q. (By Ms. Gulley) So he just decided to switch?		Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 378 of 459 HIGHLY CONFIDENTIAL
ulley)		Documen: HIGHL
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switch?	Page 340	78 of 459

will Áq had without promised never, ე ე me ever he me personally decided let he the said, t O being decision switch "Bob involved. 0 fi HAnd, promise this you magnitude you know, that Mr. go Н Ξ.

And \vdash said, "Rick, you really need \Box Ö do

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WEDGWORTH:

Objection

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you? \circ (Ву . S . Gulley) Did he promise he' 11 Ø tay with

SIMWEDGWORTH: Objection

has almost Well doubled he signed their billing മ five-year with contract additional and Ω tuf

 \circ (Ву . S. . Gulley) Let's talk about docuPAD for ש

minute Does every Reynolds dealer have മ docuPAD

NS. WEDGWORTH: Objection

MR. NEMELKA: Objection

No. That That's our goal, but Hmean

we've not yet achieved that

Ю. (Ву ĭs. Gulley) Now, ш-Н . ტ ჯ ш. Н മ Д 'n \mathcal{L}

wanted t 0 อธก docuPAD with another DMS, would

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SIMWEDGWORTH: Objection

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where 0 prohibit the magic will that screens эd You displayed Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL know, n T -1 there' i T Н docuPAD Ω add-on one Ω 0 Ф Н Ω the creen Page one 341

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they 0 good/better/best warning consumer Ť the will table for, with instantly you actuall their know, know, display K that checks repair with for kind what instance, whi thei Of . Ch There choice К their one stylus will like they payment and п Ьe an want the exte and μ. Ω К and h T nded side the the

And "Bes them. Bet they ter Policy" And Policy, can then choose and And = 1. and ıt then will which will it they will check give one can change they them they'll want they what the 9 can payment tap the none tap payment пO the g he μ. . Ω

μ. the \Box will "None" keep button, g They changing, and can T. you will they know, (verbally go the back payment indicat and click g

does customers, would Ε, N Ze sys just Ö Ω tem. consider but ი ე And, żt the Well, **∀** (D Ω you elling rework can't how \Box know, გ Իdoes from μ. would T built to, therefore മ he фe technical you get right just know, that into huge **∀** (D done? standpoint can't -uon the Reynold Reynolds What ₩0 • j. Τt

(Ву \mathbb{N} Gulley) Also Ħ talking about docuPAD

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 \circ О 4 ω \sim "profi emember ļ producer" that Yes . Sĭ. .S⊠ discussion? 9 WEDGWORTH: "revenue Objection generator.

Do

Ю (Ву NS. Gulley) WEDGWORTH: You called Objection t t sticky, right?

simply Ω wouldn't tandpoint \triangleright because рe Yeah, that sensible 1. μ. ¥ ⊕ \Box would გ Ļthink t 0 make change ļ. that გ ეeconomic O S dealers compelling will you Ø from \Box know, . G with മ money μ. Ċ

this К record, ecord 0 revenue? μ. who Ω (Ву clear you're . S MS. Who I Gulley) ი ე talking t s generating not SO about entirely \vdash think a11 Who 0 fi the clear this Ø making Ħ Ω 0 the the a11

.Sĭ WEDGWORTH: Objection

because miracle never dreamed 0 Ť The Because what, dealer μ. Ċ you Hwould ი ე know, Н do And what uŢ \Box 1 the and \vdash think original it' Ω μ. Ω occurring nigh conception, onto

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you've decided щ that' you've dec g ided done what decided what and trade-in Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL everybody kind wha 0 value Ť financing, kind you' 0 f θ you going shakes want it's Ф to hands Н \Box \mathbf{H} have \mathbb{O} \Box К Ω age you' a É 343 Ve

you b e \Box cracks warranties That's O undercoating, know he еl where business ectroni And \mathbf{H} \Box μ. μ. it' _ Ω Τt there's And what Ω Ω Ω offic key, but Ω fabric then all ţ they this nobody Ю К kinds locks \Box and protectant മ 0 call Н final final undercoats wheel O fi മ It's "rust <u>.</u> things 1; attempt N Œ protection. . T the Ċ inside. 1 and le it's bit anymore paperwork dust to \Box sell windshiel Ω you're Ηt extended used It's, which you Okay? sent you Ω

profi you everything people (indicating) dо you you ĊŢ. who that very, center can do they have long go დ 円when very for But away you say been enough, you high ᇿ the Cross កូន, with through go dealership n T "No. it's your your n T they'll customer there, = the Ф new arms very, "No. proces final Ω and like ე ქ Unfortunately, . ໝ very .1y "No." ati the Ω thi let are J S T essentia answer action you "No. warned loos μ. \Box And that And μ. . Ω

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completely changed What that happens whole n T the process docuPAD Instead, გ 1 tuati you . On μ. Ω ₩e

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20 24 22 21 19 28 17 16 15 14 $\frac{1}{3}$ 12 11 23 20 10 9 \vdash ∞ 7 \circ О 4 ω \sim pick per you and മ manager -CD-7 this Ω because Ω the know, "You" hey' 14 0 Ô akes Ô month high completely they 000 have ransactions transaction table the К Ф \bowtie \circ posture place the Ø Instead, they paying മ (indicating) stuff "You Correct basically (By Ms. month \mathbb{O} consumer and Ξf have there here, don't nur disarmed MR. Ф And you've And off t 0 there' they more മ h T typical Gulley) customers month the the tha NEMELKA: license saying comes additional hate the And get got and gross \Box Ω mirac μ. system this menu _ amounts you аt the the finance handed five, in, the the $^{\Omega}_{H}$ profi 200 Ф that 1 e that big process know, customer Objection whol they menu that telling DMS gross μ. then bucks You Ω . \Box will manager മ fla \Box O they that \square sit more t 0 stylus, they system. make the ĊŢ. typically, transaction profi μ. apiece them, the _ stand screen want they ВO Ω They're whol than Ω your given who their dealer five Ċ and they ynd ďn . D "No. They the will tha choi that say and per 200 \Box Ф mor side ime go ш. Ċ Page get Ω stylus Ω Ω handle they're buc from swear Ω "No. 0 about what that 0 to 344 μ. S Z

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11 10 9 ∞ $^{\rm M}$ Ф Ф fternoon, ttle Anenen. bit (Ву tuq Z S Do ZΝ h T you Gulley) front Nemelka remember 0 fi you gus that right \Box an shortly email L ✝ between Ω thi SW1 \Box noA Сh ge and

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- Uh-huh (Witness answers മ ΗÍ μ. rmat
- ∞ How do you feel about CDK/ADP?
- SIMWEDGWORTH: Objection
- MR. NEMELKA: Objection
- ques stion Well There that Ω individual ը. Մthat people μ. Ω മ inside complex CDK that ЯB
- they're mean, decent Ω people teve HAnenen don't Ron have μ. Workman Ω Ф good decent was feelings person Ф decent about Corporately person them а † Hall,
- for been well , T competing goes n T back excess against t 0 0 f many, 40 them years. many, directly many And, years u. you the know, ago marketplac they
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rogrammers This was	у л
building out of Westmark in Houston. And they hired	24
put in they ran a whole floor in a big office	23
And it went like this: After ADP won, they	22
that he will help me.	21
my I was dispirited about that. But the Lord decided	20
finally lost. I'm still amazed that I did. But in	19
year in depositions, arbitration and whatnot. You know,	18
We sued ADP as a result, and I wasted a	17
transaction. For some reason.	16
decided to hold back \$27 million out of that	15
And for some reason or a reason we don't know, ADP	14
records, and sold it to, you know, ADP for \$67 million.	13
fields inside the field inside the inside the	12
layouts, our our field our field layouts, our data	11
they stole our our screen layouts, our report	10
our system and built a new one based upon they	9
was a small company in Houston that, you know, copied	œ
And then about about 20 years ago, there	7
of shape about that.	Q
experience with them, and I'm, you know, still bent out	И
A. 1970s. 1970s. I have very, very bad	4
MS. WEDGWORTH: Objection.	ω
1970s?	N
Q. (By Ms. Gulley) Are we talking '70s, the	Н
Page 346	

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the and working. their, this they whole quote, And worked, They thing. they "victory" said, and worked "Well, finally, over and they **₩** Вор five can Brockman, worked fix years this and after they they Wе their scrapped worked Ω an do

mi. legal them, lion including fees and Toz cost And fighting the them S D original close five me years off S D purchase Hμ. Ω n. an. \Box cost market estimat price them \mathbb{O} becaus plus \$2 5 that SOD \mathbb{O} the al \Box

Ω eneration piece S O Of. obviously, software HSPM have going Ф lot t 0 0 Ьe Н very, very

trong Lke them, feelings and Н about don't ı. like them about മ ADP lot 9 CDK. \vdash don't

more profits? Ю (Ву $\mathbb{S}_{\mathbb{N}}$ SIGulley) WEDGWORTH: Do you Objection want help them

ΜR NEMELKA: Objection

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Reynolds and Reynolds .S N WEDGWORTH: Objection

 \triangleright Unequivocally

going 0 (Ву ĭs. require Gulley) When did you i ts learn that CDK

through the 3PA program rather than any other method?

NS. WEDGWORTH: Objection

don't know the exact day, but it t SPM

substantially after the stand-down agreement

 \circ (Ву . S. Gulley) SO μ. \Box was after February 2015

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.SM WEDGWORTH: Objection

 \circ (Ву . ™ . Gulley) Did you personally agree with

anyone a t CDK that you would get together t o block

Authenticom?

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SMWEDGWORTH: Objection

MR. NEMELKA: Objection

 \triangleright Did not

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Ю . (Ву ĭs. Gulley) That you would get together

> \Box Ö

20 24 22 21 19 28 17 16 15 14 13 12 11 23 20 10 9 \vdash ∞ 7 \circ И 4 ω \sim even between policies those third-party together? anyone block discuss \tilde{o} ∞ \circ $\overset{\circ}{\circ}$ 0 anyone kind a t anyone No No. Wе (Ву (Ву (Ву about (Ву Absolutely (Ву CDK 0 fi have have data have . ™ . ĭs. . S . . S. . S. the n T MS. .SM NS. NS. that Did NS. SM conversations а С system access Authenticom's not Gulley) two Gulley) brokers, Gulley) Gulley) Gulley) not WEDGWORTH: WEDGWORTH: WEDGWORTH: WEDGWORTH: WEDGWORTH: Reynolds WEDGWORTH: you would not firm's like Dj. Are Did Are Have and with . Д data destroy t 0 you you you you Objection Objection business Objection Objection Objection Objection CDK you Authenticom? their CDK? access aware and awar personally ever † 0 Authenticom DMS CDK Ó eliminate line 0f policies? discussed CDK's of. ever with any anyone agree mee agreement CDK? Page \Box to

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Case 3:20-cr-00371-WHA whi access . ch μ. Ω policy, which really, didn't SPM Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL Ф until come customer t 0 **∀**0 understand bought They ReverseRisk their they Page 388 of 459 data Page acquired ω

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dat wasn't worked downloads until that for time accounting that Hdat understood, from CDK, even, how Ļ. μ. Ċ

how like agreement ike the Authenticom, Authenticom, Ю . two Absolutely. (Ву between firms . S . NS. Gulley) would Reynolds WEDGWORTH: ΞÉ were there $\mathbb{A}_{\mathbb{S}}$ going you know about you Thes SPM and probably t 0 Objection any CDK jointly rela such can terms ted agreement treat tell, \Box 0 0 companies somebody I'm about

the Ι'm without world into Уm the anything knowledge details like big that time. would And happen there without Ω no МA u,

between would CCESS 0 you policies? Reynolds (Ву know ĭs. about and Gulley) Ιf it? CDK there related What were about any to agreement the any two agreement f j .rms' like that data

A. Absolutely.

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MS. WEDGWORTH: Objection

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A. Absolutely

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 ∞ (Ву . ™ . Gulley) Did you enter into

20 agreement ٤, .th CDK t o create മ market where Reynolds

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 \vdash Case 3:20-cr-00371-WHA controlled a11 0 f the Document 69-20 Filed 12/15/20 HIGHLY CONFIDENTIAL access t 0 data stored Page 389 of 459 g Page 351

agreement? dat Reynolds מ ∞ stored DMS (Ву п . S . and $\mathbb{N}S$. CDK's Gulley) CDK WEDGWORTH: DMS? would Are control you Objection aware a11 0 f Of the any access such to

MS. WEDGWORTH: Objection.

- \triangleright There დ Իou there μ. Ω. on such agreement
- 0 (By . ≅ Gulley) $\mathbb{A}^{\mathbb{S}}$ noos S D **∑** (D find it, I'11
- hand you Exhibit 644, from plaintiffs, earlier marked
- Τt Ω notes from Ф sales meeting n T Aspen $\mathbb{S}_{\mathbb{N}}$ Wedgworth
- direct you t 0 the page ending 632 \mathbf{H} don't
- actually know μ. Н \Box SPM ĭs. Wedgworth 9 Mr. Nemelka S D
- Sit here, but do you recall looking Ф \Box this document
- before?

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A. Yes, I do

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- $\overset{\circ}{\circ}$ And again, these are Hbelieve you
- \Box estified, h T mus and substance, that these are your

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- notes n, preparation 0 Н speaking t 0 the dot sa1 espersons
- at Reynolds in --

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- MS. WEDGWORTH: Objection.
- Q. (By Ms. Gulley) -- July 2014.
- MS. WEDGWORTH: Objection

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2 24 23 22 21 20 19 28 17 16 15 14 13 12 11 10 9 ∞ 7 \circ О 4 ω \sim \vdash thi here explain behind bottom. I'm the document "Security" at there? . Ω looking security Ю· \circ section Ю· \boxtimes \circ Ю 1 us. " what Bullet Okay Yes And then A11 Yes, (Ву "This (Ву Ω (Ву (Ву a t this . S . . S . ĭs. wars you Do . S. total, n T żt the .SM NS. SIMSM could the 1, you earlier meant Gulley) 632? Gulley) Gulley) would Gulley) there's very WEDGWORTH: bottom? 2 WEDGWORTH: WEDGWORTH: WEDGWORTH: penultimate like, 0 0 put ω Ьe Хq much questioning. where 4 the "security wars" And You 632 12 the Ф number behind security Bullet were how right. sales Objection Objection Objection HObjection am? Do the many รม 0 f you asked VPs 4, wars I'd = second bullet There' ე ტ ტ sales "Thi Ф Do like T'D lot Ω very where Ω this VPs from the points could മ you about much line μ. Ţ put says

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16 20 24 22 21 19 28 17 15 14 13 12 11 23 20 10 9 ∞ 7 \circ О 4 ω \sim \vdash with you And and Н-"War 0 that and out Ω cal thi know, then method cat-and-mouse orth rom. aus \Box Ť war rd-party **₩** ¥ ⊕ know, Œ go room" DMI Ω \circ them, back dif like them figure will by which per kind will and The about and Н The (Ву dummies S DA erent with its and t 0 has Ф ω Ω Of dat devise \mathbb{N} war ultimately, Integra subject 0 ф ф employing And Now, kind MR. മ not been, Ť מ countermeasures forth somebody way You Ф speech seesaw, unable Gulley) brokers, then NEMELKA: capital what 0 f And മ മ What know, 0 f nature over Link!! countermeasure And situation they that' da that t 0 Ф countermeasures they'll do ი ეyou observe \mathbb{W} that ta SO **∑** (D And the hackers get getting and Ω Objection know, that ¥ O Ĥ გ ეsecurity, don't μ. where years, will into Ċ they're where don't Ω Authenticom appli that Ô 0 sort the have kind ა ე whatever Ť into work ი ე the the data very . D have one And **∑** (D that 0 fi they'll when security Of Ф inf system will t O for the much thing tha security they' Ф back and and erenc this you and ijt മ system declaration detect that' figure we'11 ტ გ for while comes SIS War want quote come not you Ω മ SPM to

strategy, you know, could, potentially, the same thing	25
integrator that employed any kind of write-back	24
involve data integrator. Come, however, any data	23
A. That particular situation, yeah, did not	22
MS. GULLEY: Form.	21
data innovators, right?	20
to the Xtime incident have nothing to do with use of	19
Q. (By Mr. Nemelka) So your answers with respect	18
A. That's correct.	17
MS. GULLEY: Form.	16
because of any data integrator; correct?	15
Xtime incident happened through the RCI interface, not	14
Xtime incident, and I have a question about that. The	13
Q. Mr. Brockman, you testified about an an	12
BY MR. NEMELKA:	11
FURTHER EXAMINATION	10
few minutes left.	9
have nothing further. I believe the plaintiffs have a	Φ
MS. GULLEY: I thank you for your time. I	7
still he's still regrowing his fangs.	Q
one of the early and one of the worst ones. And is	Л
A. Probably, you know, Phil Bautista was was	4
MR. NEMELKA: Objection.	ω
MS. WEDGWORTH: Objection.	22
those folks? Or something else?	Н
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A. That's correct. But I think it's a pretty good	MS. GULLEY: Objection; form.	just a guesstimate, right?	Q. (By Mr. Nemelka) All right. That number is	experience in the business.	Page 357	Case 3:20-cr-00371-WHA Document 69-20 Filed 12/15/20 Page 395 of 459 HIGHLY CONFIDENTIAL

add right? that \circ I'm, It's (Ву Mr. you know, probably still S_{N} Nemelka) GULLEY: speculative. But Objection; μ. \Box uniquely But Ω ე ე form 111 I would qualified speculative, I would

t 0 make MR. that NEMELKA: 0 f guesstimate right

kind

FURTHER EXAMINATION

ВY NS. WEDGWORTH:

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you exemptions remember $\tilde{\circ}$ Mr. are Brockman, saying only for that you speci when stated Н . S . U 1securi Gulley earlier .ty SPM policy. that asking the

questions?

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Yes,

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halfway Plainti rom Mr. Ю· Н down Ħ. Schaefer Ω Н you the Here's could page, t 0 you. ω look . the д Д doa Do $\mathbb{Z}_{\mathbb{N}}$ you email, Brockman, д Д 3 0 0 0 Exhibit that? j. you'll thi \mathcal{O} Ω Ω 0 document note, Οf ი ე

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 $\label{eq:Veritext Legal Solutions} Veritext Legal Solutions \\ 215-241-1000 \sim 610\text{-}434\text{-}8588 \sim 302\text{-}571\text{-}0510 \sim 202\text{-}803\text{-}8830$

16 20 24 22 21 20 19 28 17 15 14 13 12 11 23 10 9 \vdash ∞ 7 \circ О 4 ω \sim you, Do you dealerships dealerships, PAG any Ιt new I've might thos completely, you Ω wanted tat Œ exceptions? security read \triangleright 0 ∞ \triangleright Hendrick, toward \circ are К recall . B B recall For Yes And (Ву That's (Ву Excuse a11 this to = H have but the . S. $\mathbb{S}_{\mathbb{N}}$ enhancements the that certain, here, right? SISIMam dealerships; PAG .SM that? implement They AMSI, me . bottom correc email always Wedgworth) trying Wedgworth) Which and dealt GULLEY: GULLEY: GULLEY: $\mathbb{Z}_{\mathbb{N}}$ Ξ are not Let Rahal, you Hendrick, **∀** 0 f which Schaef had some t 0 and with sure me have to the know, Form Form. correct? understand Objection; read did Wyler exemptions; 0 f Ьe ը. Մ-G G And S O security email, tha always PAG, says the AMSI, implemented here implement dated this they Ċ etc \vdash \vdash talking understand Hendrick, that arges again Мау had? Į. $\mathbb{Z}_{\mathbb{N}}$ മ form enhancements Rahal E R μ. Ω there large ∞, Schaefer that those that bу and For about 2016 Yes, AMS will Reynolds month Page Wyler example Ϊt correct? Hyou the that asked Ьe ω 5 Н

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MS. GULLEY: Objection; form.	23
A. The the	22
exceptions for these dealerships, correct?	21
Q. And he's saying, We have always had these	20
to be. And he's asking, he's saying, "Please advise."	19
to know, you know, what kind of exception is is going	18
A. What Bob Schaefer is doing and that's he wants	17
Q. (By Ms. Wedgworth) Well	16
A. And what what	15
your time.	14
MS. GULLEY: That's that's the end of	13
thing.	12
as, you know, downloading of data and that sort of	11
allowed them, you know, some specific exceptions as far	10
And in those particular cases, we've always	9
really, really savvy and know what they're doing.	ω
but they have a small number of individuals that are	7
they still have not a large number of individuals,	σ
Rahal and Wyler are a little smaller, but	И
what I would call quite sophisticated.	4
have very extensive IT staffs of their own. And they're	ω
are very large organizations, amongst the largest, and	N
personally aware of always had some exceptions. These	Н
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 \vdash ω \sim the deta 0 Ę. (Ву . S . \mathbf{H} NS. Ω an't Wedgworth) GULLEY: you Peggy, And exactly Ľ. that's addition the end t 0 Page 0 Ť your 360

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took covered Ф long lots time, 0 f S_{N} you went WEDGWORTH: മ lot 0 fi over topics I'm മ lot going 0f to topics continue NoA

NoA

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questioning him. S_{N} 0 S WEDGWORTH: HI'm going Nor did t 0 Hcontinue when SPM Λm

You're wrong about MR. NEMELKA: your calculati Wе have . On two anyway, more minutes

Н ive dealerships, \tilde{o} (Ву ĭs. Wedgworth) there's also SO an = etc O S other = а Т the than end the

MS. GULLEY: Objection; form.

A. Yes, ma'am, I do.

 ∞ (Ву . S. . Wedgworth) And O S that doesn' \Box

μ. \Box to just the five dealerships who always have

exemptions; is that correct?

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24 ω 22 21 19 28 17 15 14 13 12 11 10 20 . თ 9 ∞ 7 \circ О 4 ω N \vdash total one that would the stand-down agreement; And that we've \Box exhibit. those ind e11 that exhibit more we're ß S Ю· ᆣ 0 \triangleright \circ number from Ьe exemptions number also 657 Ma'am, Gulley 00 That's (Ву (Ву used not S O K But looking talked keeps μ. $\mathbb{S}_{\mathbb{N}}$. S. . S . 0 f . H no more a11 MR. NS. \vdash S_{N} \mathbf{H} S_{N} with ¥ ⊕ \Box exceptions referred correct \mathbf{H} SPM Wedgworth) Wedgworth) Wedgworth) coming won a t GULLEY: NEMELKA: the coming about GULLEY: WEDGWORTH: you the this Н way there go correct? or multiple don't down try today i, down, very you t 0 that the Object Objection; And, t o the Hknow, And But t O first Okay can do down, last yet are that first came again, and ion the ıt try that <u>_</u> you one out two you let without after biggest down, to exhibit form. more know, days Ω ¥ ⊕ today, there μ. find Ω reviewed, the _ Ω the down, Ω D drop looking about and the Ron μ. Н \mathbf{H} Н that which ш- \Box Н can't there' think down Tor Lamb let 0 Н where you the can you. for

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documents in response to the Court's ruling on the	25
to compel. As you know, we're all still producing	24
court ruled that they would be produced after the motion	23
MS. GULLEY: You compelled them and the	22
we certainly didn't see them coming in on Friday night.	21
MS. WEDGWORTH: Actually, we did not. And	20
were coming in advance, because we	19
MS. GULLEY: You knew that those documents	18
to	17
the weekend. And for all those reasons, we are going	16
MS. WEDGWORTH: pages of documents over	15
MR. NEMELKA: Pages of documents.	14
documents	13
In addition, you produced over 2,000 200,000	12
answers and we're entitled to respond to all of that.	11
You've asked a lot of questions. He's given very long	10
single question. We let him take as long as we want.	9
The least of which is that we we let him answer every	ω
going to keep this deposition open for many reasons.	7
MS. WEDGWORTH: Well, I'm going to I'm	Q
reserve enough.	σ
questions of all of our witnesses. You just did not	4
beyond your time. For the record, we have asked	ω
beyond your time. You can finish the you are way	N
MS. GULLEY: Ms. Wedgworth, we're way	Н
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depositions documents once And **∀**0 understand that **∑** (D Ω an only

that deposition, longer еуев only mean over NoT Mr. two but თ თ have days, We Brockman **∀**0 rather Ф used L L L said not not really the because before t O holding give entire cannot 0 f you the health health seven മ Ьe deposition one-and-a-half her hours considerations Ø 0 any attorney We open longer split day

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 S_{N} GULLEY: How much longer do you need

24 Ms. Wedgworth?

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MS. WEDGWORTH: I'm not sure. It'

next steps. Counsel for plaintiffs approached me and	24
there was discussion back and forth among counsel about	23
MS. GULLEY: While we were off the record,	22
4:42 p.m.	21
THE VIDEOGRAPHER: Back on the record at	20
(Short recess 4:20 to 4:42 p.m.)	19
p.m.	18
THE VIDEOGRAPHER: Off the record at 4:20	17
MS. GULLEY: Okay. Off the record.	16
MS. WEDGWORTH: Certainly one hour, yes.	15
for one hour, additional?	14
MS. GULLEY: And you'll be asking the Court	13
MS. WEDGWORTH: Correct. Correct.	12
record, for the future.	11
you're filing a motion to just to be clear on the	10
the record for an extension of one hour. Otherwise,	9
to go off the record. You're asking me before we go off	∞
MS. GULLEY: Well, I believe that we need	7
this.	O
all. I would think at least an hour could cover all of	U
MS. WEDGWORTH: Nope. Not unlimited at	4
court for, an unlimited deposition?	ω
MS. GULLEY: What are you going to ask the	N
depending on his answers.	Н
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consideration therein expressed. Given under my hand and seal of office this	2
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her document) to be the person wh	19
day personally appeared ROBERT BROCKMAN, known to me (or proved to me under oath or through	18
BEFORE ME,, on this	17
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true and correct, except as noted above.	
I, ROBERT BROCKMAN, have read the foregoing deposition and hereby affix my signature that same is	13
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CHANGES AND SIGNATURE WITNESS NAME: ROBERT BROCKMAN DATE: January 17, 2019 PAGE LINE CHANGE REASON	7 W N H
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[implemented - intelligence]

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[warned - willing]
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From: Bob Brockman <bob_brockman@reyrey.com>

ᅙ Sent: Friday, November 16, 2018 6:00 PM Captain M/Y Albula

Flag Status: Follow Up Flag:

Follow up Completed

생ust checking in – my incredibly busy fall season is just about over.

的ware things with the Albula?

go the time slot starting the day after Christmas open for a week or so? P.

XSD 8 PS: would you look up the dates of the fishing trip to the Berry Islands that were spring before last. Those tides and the resulting strip were awesome.

PPPS: How long is the trip from West Palm to Birnini? Are the waters rough when crossing the Gulfstream? Is there decent Gnchorage in Birnini

1-3

Case 4:211-cr-00009

Case 4:211-cr-00009 2 SPS: are the water depths in Biscayne Bay deep enough for the Albula?

From: ᅙ Sent: Saturday, February 02, 2019 8:30 PM Bob Brockman <bob_brockman@reyrey.com>

Captain M/Y Albula

Flag Status: Follow Up Flag: Follow up Completed

Tom,
Please send me the plan for the two trips this spring.

Mmportant points-

Global crew fly home commercial

After arrival and breakfast – start the first day of fishing (Day 2) Repart for Chub Cay area that afternoon — traveling overnight (Day 1)

Ahird day of fishing (Day 4)
Aourth day of fishing (Day 5)
Eifth day of fishing (Day 6) Second day of fishing (Day 3)

Arriving on (Day 7) After the 5th day of fishing — depart for Ft. Lauderdale traveling overnight

ிhe start dates should be as you have figured out based upon the tides.

Case 4:21-cr-00009 Document

From: Bob Brockman <bob_brockman@reyrey.com>

Sent: ö Captain M/Y Albula Friday, March 15, 2019 1:57 AM

Subject: RE: Albula - April Chub Cay trip

Tom,

Please talk to Charlie about the date changes.

र्म will also cause the Dayton trip that just precedes our trip to move forward a couple of days.

 $\mathfrak A$ it is possible to land at Chub at the beginning of our trip and at the end – that would be great.

rocket. 🕉 tharlie will likely fuel manage the trip so that on the trip home – so that we are light – which enables the Global to climb like a

XSD &

From: Captain M/Y Albula [mailto:captain@myalbula.com] Sent: Thursday, February 14, 2019 8:45 AM So: Bob Brockman
Subject: Albula - April Chub Cay trip

Good morning Bob,

அe a great database of more guides for the Berries if we have a hassle. confident that we will make a plan. We have the Bonefish and Tarpon Trust onboard again at the moment, and they have given 👝 pologies for the delay in further feedback — I am battling to get hold of Percy to confirm the date shift for the guides, but am

We know that we were planning to start and finish these trips in Fort Lauderdale, but after looking into it further we have the bollowing challenges:

1. Customs and Immigration in Lauderdale can be a challenge. They do not come to the Yacht, we have to go to the They also are closed on Saturdays/Sundays and public holidays (So I have to assume they will be closed on Goo

- Customs and Immigration in Lauderdale can be a challenge. They do not come to the Yacht, we have to go to them. They also are closed on Saturdays/Sundays and public holidays (So I have to assume they will be closed on Good
- Friday).

 2. The Marina will not guarantee that we can get a berth that we can get onto on all states of the tide this could influence our departure/Arrival and make things tight is we are delayed for any reason and we miss the high tide of the have the challenges of weather in the Gulf Stream for the crossing to the Berry Islands.

 3. We have the challenges of weather in the Gulf Stream for the crossing to the Berry Islands. influence our departure/Arrival and make things tight is we are delayed for any reason and we miss the high tide.

Looking forward to hearing your preferred option, Charlie and I will make the necessary arrangements

Kind regards

Tom

From: Bob Brockman brockman@reyrey.com

Sent: Tuesday, February 12, 2019 8:31 PM To: Captain M/Y Albula <captain@myalbula.com>

Dorothy has pointed out to me that the dates for the first trip conflict with Easter (3/21).

Therefore I need to move the trip ahead 3 days so that the last day is 3/19 so that we get home on Good Friday.

Please confirm that this can be done. Please talk to Charlie.

Page 1 of 1

Message

From: Bob Brockman Sent: 2/13/2020 8:46:16 PM

To: 'tommyb Subject: RE: GoMoto

Tommy

Your comments are valid.

we don't have much risk of buried bombs. This is a young entity that is barely a company. That would indicate that they don't have a lot of history to dig thru - so

As far as paying too much – probably so.

reproduce. The trade off is that we got a product that would taken us as much as a couple of years or more to define — and then

service customers is a barrier to more service business unless new facilities are built. With the slowing of new car sales, the focus will be even greater on the service department - however check in time on

have more people and resources. Therefore is much more timely than usual — helping service sales keep up their profits up without having to

One of your first stops at the display should be listening to the story.

800

From: tommyb

Sent: Thursday, February 13, 2020 12:21 PM

To: Bob Brockman

Subject: FW:

pay..? Based on your comments from other acquisition fast is not always the best strategy - did we over

Do you have an opinion on this deal..?

Tommy

Sent: From: tommy. 3/1/2020 9:57:01 PM Bob Brockman

Subject: FW: See financials and Fact Sheet to Bob

lommy,

One of my concerns is that the key to keep the sales department from running over everyone else – is people like

Schaefer and Agan before him.

Management of sales decision making is one of the most complex things that I have to teach you about

It cannot be done quickly — as the education is focused on many, many situations — what is happening, what should the response be to the situation at hand?

Right now Schaefer is the most knowledgeable about the above rules and policies

Rudy is the most adept at trying to find a way around the rules - which is a source of friction between the two

way. Otherwise Schaefer will become "broken" and give up trying to keep a lid on sales people - which will cause Sales Unless the situation is that Schaefer is clearly not following my rules and policies – the decision must go Schaefer's

be allowed to try to move Schaefer around on his own. Then it is an educational opportunity for you and me to discuss. If sales doesn't like a decision — let them endeavor to make their case — in writing and only with you — Rudy should not

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I taught him. He is dug into his position quite correctly. For sure he wonders what is going on and what is happening to Right now Schaefer undoubtedly feel like a lonely soldier. He was assigned his task. He is following my orders and what do whatever they want — which in his heart he would believe that to be insanity. him. When there are different orders and rules, he will follow orders — unless it involves giving salesmen a free pass to

From: tommybarras@reyrey.com
Sent: Saturday, February 29, 2020 8:41 AM

Subject: RE: See financials and Fact Sheet to Bob

I hope the outcome is positive - begin to change your opinion. Only time will tell

good). game plan and our expectation for Rudy to follow. My comments on ExCom - Willie, Santana, Rudy sat together to build game plan (Willie is really points we must have in order to have a deal. The pro's and con's (the discussion) was as you envision. The "white boarding" laid out the Without those we walk away Very positive event - all are in agreement on the

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must fail in order to accomplish. want to battle to show up the other. Rudy and Schaefer at each other's throats. There is no middle ground. Both want you to see them as the key to the future - the other The negativity is not productive

fighting is only hurting Reynolds - the game to prove to you who's best should not be addressed by best if you didn't intervene. Do not fan the flame - ignore it and hopefully they will get the point I talked for a couple hours with Schaefer, an hour with Rudy.

Tommy

From: Bob Brockman

Sent: Friday, February 28, 2020 6:52 PM To: tommyb

Subject: RE: See financials and Fact Sheet to Bob

I think that it is too early to declare a "win" on this

proposing. The OEM's are notorious for being flakey. They are just apt to say "we want to buy" - but at half the price we are

Then they get bitter that "we would not cooperate"

project doesn't work out to their satisfaction Another interesting outcome is that with us involved in the project — we are well positioned to get all the blame if the

I have been seeing all of this happening for the last 30 years or so.

From: tommyb: Sent: Friday, February 28, 2020 10:10 AM

To: Bob Brockman

Subject: FW: See financials and Fact Sheet to Bob

to use this opportunity to improve relationship with OEM and improve utilization of our products with Bob - I have the ball. Willie, Santana, Rudy and Schaefer will settle on the parameters customers

May also provide us a selling opportunity

be a Lots of give & take this morning on this topic. strong solution for the future. You need to be pleased The ExCom strategy (no one knows this term yet) will

From: Robert Schaefer <

Sent: Thursday, February 27, 2020 9:44 PM

Sent: From: Subject: 6/3/2020 7:54:20 PM RE: Wow...I cannot explain Bob Brockmar tommy_b

Tommy

with the decision. leaked or published. We need to focus on the reasons for making any decision. The reasons should be stated along To start with – you and I should be talking every day about any decision of importance that is cooking – before it is

The purpose for this is that it raises the odds in favor of making all decisions as thoughtful and correct that they can be

This makes your record as perfect as it can be - which enhances followership.

hurried! "RIGHT" – not to do it quickly. Just because someone else is wanting a quick decision – do not let your decision be Always remember - in virtually every case there is time to think and talk about a decision. The main thing is to do it

To: Bob Brockman; Dorothy Brockman From: tommy_b Sent: Tuesday, June 02, 2020 7:54 PM

Subject: Wow...I cannot explain

Bob, Dorothy

disappoint you. not understand why you choose me to carry forward your mission – but I will do my best to never I cannot describe the feelings I have tonight knowing the new chapter that begins tomorrow. I still do

You guys are my family. Pray for me – give me the strength needed to carry on your legacy

Love you guys

Tommy

Memo to: Rob Nalley

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From: Bob Brockman

Subject: Bob Brockman – stand down

due to fatigue – plus recognition that I am in the final 20 percent of my life (if I am lucky). The first reason that I am standing down at this point is largely

have led – and do not want to see it fall apart The next reason is that I am very proud of the company that I

successful. A sale effort in the early part of this year – would not have been

high levels of profitability currently enjoyed. plus a bunch of specialized VP's with no clear path to the same A buyer would have looked at two aged guys (you and me)

Buyers would have used that weakness to beat us up

to the email monster. management agreement – but that would have left me chained could have gotten past this objection by signing up for a 5 year

important for me to see that a sale process occurs at a I have a lot tied up in my 1% of sales proceeds reward. multiple. It is even more important to you. good It is

This is what I am going to do.

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28th become Advisor to the CEO — on or before my birthday — May My plan going forward is to give up all my rank and title -and

efficiently. generation everything I know about how to run the company My intent is to work 4-5 more years helping teach the next

my goal is to help the new leadership improve EBITDA results by 50% or more. This will culminate in a successful salesprocess. Along the way

That is my plan.

Your situation is different, but very similar in many respects

see them and help them be successful at life. We both are at the grandkids phase of life – where we want to Oregon half the month. I will be in Colorado in the summer You are in

We both earn a good monthly income.

sundown together. I would have very good feelings about us riding out into the We have been friends and comrades-at-arms for half a century.

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Your Plan

current annual compensation for the next five years. I believe that I have sufficientl authority left to guarantee

Advisor to the CEO President and take the same title as mine – which will be My recommendation is that you resign as Vice Chairman and

their jobs so that when we finally stand down, the company will display by far the best leadership team in our industry. We then work together to help the ExComm members learn

You will also have Advisory charter over the following

- whether or not to settle any lawsuit. From a day-to-day operational standpoint, Scott Cherry will report to Craig Moss. You will be the Advisor. Legal must have your approval (veto power) to decide
- including new personnel will be your charter Aviation department - Aircraft operation and maintenance
- ı and salary adjustments – plus reporting. You will be the Advisor. Charlie Zeto reports to Craig Moss with regards to reviews

Jerry Kirwan and the Documents Business will report to Tommy Barras. You will be his Advisor.

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Message

Sent: From: Subject: RE: Thank You. 6/3/2020 5:55:40 PM Bob Brockman Arnett, Michael D (Mike)

Mike,

Thanks for the kind words.

805

From: Arnett, Michael D (Mike)
Sent: Wednesday, June 03, 2020 8:02 AM

Subject: Thank You. To: Brockman, Bob

to call family for 26 years so far. Thank you for the blood, sweat and tears you have shed to build this great company that I have been blessed

I pray that God will bless you, Dorothy and especially that new grandchild as you transition to the next season before you.

Thank you again for all you do Bob,

Mike Arnett

Marketing & Document Services Consultant

The Reynolds & Reynolds Company



From: ReynoldsWorld

Sent: Wednesday, June 3, 2020 7:54 AM

To: All US Associates

Subject: Memo from CEO Bob Brockman: Management Changes All Canada Associates <

To all Reynolds Associates:

believe will position us to grow and thrive for many years to come I want to let you know about some management changes at Reynolds and Reynolds, and its affiliates, that I

celebrating the 52nd anniversary of my marriage to my wonderful wife, Dorothy. She and I also welcomed the birth of our first grandchild, James Maxwell Brockman, a few short weeks ago. The two touchstones of my life have been my cherished family, and my second family at Reynolds and Reynolds. On May 28, 2020, I celebrated my 79th birthday, which came just over six weeks after the pleasure of

truly great strengths of our company over the years has been our ability to attract talented people who stay with Services, Inc. Together with you, we have built this company into a remarkable industry leader. One of the I have been privileged to serve as steward of our company from its inception when it was Universal Computer us and make valuable contributions over the course of their entire careers.

people who have been with us for virtually our entire journey. agreed to step into the role of President and Chief Operations Officer. Tommy is one of that small handful of It is important now that we plan for the future. I am pleased to announce that Tommy (N. Thomas) Barras has

strengths of our software and products, and the talented associates who deliver on both. Those strengths will career have been key to our success as UCS and now Reynolds. He understands in amazing detail the core and again on matters large and small. Equally important, Tommy's product achievements over his forty-year He has worked his way up from Shipping and Receiving to become a senior leader on whom I have relied time remain our defining characteristics as an organization.

I will continue in my current position. I plan to focus my time and attention on supporting Tommy and our leadership team to position the company for transition and growth beyond my leadership.

I am also letting you know that Rob Nalley stepped down from his position as President. Rob will continue to serve the company as an Advisor and Vice Chairman until I step down as CEO.

through this transition period. career. I have thought of him as my right hand for more years than I can count. I thank him for his service as President. I am also grateful that he will continue as my trusted advisor and good friend as we move forward Rob joined us as a salesman almost fifty years ago. He has served in many leadership roles throughout his

diversity of our operations, I am also announcing the formation of an Executive Committee (ExCom) that will work together as the company moves forward. This committee, led by Tommy, will include seven members future vision. In addition to Tommy, who will be Chairman of the Executive Committee, the members will be: who will also serve as Division Heads who can provide subject matter expertise along with a collaborative The company today vastly exceeds my greatest expectations when we began. In recognition of our size and the

- Willie Daughters, Executive Vice President of Customer Support
- Eric Edwards, Executive Vice President of Technology, CTO
- Keith Hill, Executive Vice President of Sales
- Scott Santana, Executive Vice President of Product Management
- Jerry Kirwan, Executive Vice President of Document Services
- Craig Moss, Executive Vice President of Finance, CFC
- Robert Burnett, Executive Vice President of Corporate Development

Filed 12/15/20 Page 3 of 3

have agreed to step up to these new responsibilities. three decades. They have contributed significantly to what makes us great today, and I am grateful that they Each of these individuals has been with the company for more than two decades, and in some cases for over

Leaders who report to me or Rob will begin reporting to Executive Committee leaders as declared by Tommy.

years. Together we have built something to last. I ask that you join me in working together as we move forward in this time of transition, in support of this entire leadership team. I am honored every day to work with every one of you. I thank you for your trust and support over the many

Bob

Clear Form

NORTHERN	TATES DISTRICT DISTRICT OF CA CAND 435 AND Rev. 02/2015)			CJA co	use one fo ounsel plea	RIPT ORDER rm per cour ase use Forn uctions on n	t reporter. m CJA24			COURT USE ONLY DUE DATE:							
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1b. ATTORNEY Michael	NAME (if different Pitman	t)	2	tb. ATTORNEY PHO (408) 53					3. ATTORNEY michael			j.gov					
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CAND 435 (Rev. 02/2015)

INSTRUCTIONS

Use this form to order the transcription of proceedings. *CJA counsel should use Form CJA24*. Before completing this form, please visit <u>cand.uscourts.gov/transcripts</u> for complete transcript ordering information. These INSTRUCTIONS SUPPLEMENT THE WEBSITE INFORMATION.

- 1. Complete a separate order form for each case number for which transcripts are ordered.
- 2. Complete a separate order form for each court reporter who reported proceedings in the case.
- 3. Complete Items 1-12. Keep a copy of your completed order form for your records.
- 4. E-file this form in the U.S. District Court CM/ECF system. *Exceptions to e-filing*: (a) sealed cases/proceedings; (b) non-parties; (c) pro se parties who are not e-filers. In such cases, mail or hand-deliver a hard copy addressed to the court reporter c/o the Clerk's Office at the Court division where the proceeding was held.
- 5. Email the court reporter (email list available at <u>cand.uscourts.gov/courtreportercontact</u>) promptly after this Transcript Order Form is e-filed to obtain the amount of the required deposit. Deliver payment to the court reporter promptly. Upon receipt of the deposit, the court reporter will begin work on the transcript. *Exceptions:* (a) orders for FTR transcripts and (b) daily trial transcript orders.
- 6. Unless prepayment is waived, delivery time is computed from the date the court reporter receives the deposit, authorized CJA 24 Form, authorization from Federal Public Defender's Office or, for transcripts ordered by the U.S. government, from the date of receipt of the DCN number.
- 7. The deposit fee is an estimate. Any overage will be refunded; any shortage will be due from you.

ITEM-BY-ITEM INSTRUCTIONS (ITEMS 1-12):

- Items 1-3 In fields 1a, 2a & 3a, please provide the contact name and information for the person responsible for ordering the transcript. In a law office, this is usually a paralegal or administrative assistant, not the attorney. In fields 1b, 2b & 3b, provide the attorney name and contact info, if the attorney is not the contact person.
- Items 5-6. Only one case number may be listed per order.
- Item 7. Visit <u>cand.uscourts.gov/transcripts</u> for instructions for determining the name of the court reporter who reported the proceeding or if the proceeding was audiorecorded. If minutes have not been filed, contact judge's courtroom deputy.
- Item 8. Check appeal OR non-appeal AND criminal OR civil. *In forma pauperis*: a court order specifically authorizing transcripts is required before transcripts may be ordered *in forma pauperis*.
- Item 9a. List specific date(s) of the proceedings for which transcript is requested. A transcript of only a portion of a proceeding may be ordered, if the description is clearly written to facilitate processing. Under "type," indicate briefly what type of proceeding it was, such as "motion," "sentencing," or "CMC."
- :em 9b. Select desired **FORMAT(S)** for transcript. There is an additional charge for each format ordered. Visit <u>cand.uscourts.gov/transcriptrates</u> for details. Unlock ECF/web access is included at no extra charge with each of the other formats.
- Item 9c. There are 6 **DELIVERY TYPES** to choose from (times are computed from date of receipt of the deposit fee or DCN number). **NOTE**: Full price may be charged only if the transcript is delivered within the required time frame. For example, if an order for expedited transcript is not completed and delivered within 7 calendar days, the 14-day *delivery* rate would be charged.

TRANSCRIPT DELIVERY TIMES:

ORDINARY — 30 calendar days.

14-Day — 14 calendar days.

EXPEDITED — 7 calendar days.

DAILY (NEXT DAY) — Following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually is a court day. HOURLY (SAME DAY) — within two (2) hours.

REALTIME — A draft unedited, uncertified transcript produced by a certified realtime reporter as a byproduct of realtime to be delivered electronically during proceedings or immediately following adjournment.

- Item 11. Sign in this space to certify that you will pay all charges (the deposit plus any additional charges.) An electronic or conformed (/s/) signature is acceptable.
- Item 12. Enter the date of signing the order and certification.

27 26 25 24 23 22 21 20 19 18 17 16 15 13 12 1 10 14 9 S ∞ 7 6 S 4 2 that time should be excluded under the Speedy Trial Act because of the complexity of the case, because another motion hearing set for January 12, 2021. Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) CHRISTOPHER M. MAGNANI (Maryland) 2020 through January 12, 2021. defendant Robert T. Brockman, that time be excluded under the Speedy Trial Act from December 15, Attorneys for the United States of America Trial Attorneys COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF AMERICA 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < A motion hearing was held on December 15, 2020, and the next scheduled date in this matter is It is hereby stipulated by and between counsel for the United States and counsel for the Plaintiff. Defendant. NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION The government and counsel for the defendant agree FROM DECEMBER 15, 2020 THROUGH JANUARY 12, 2021 AND [PROPOSED] ORDER STIPULATION TO EXCLUDE TIME Case No.: 3:20-cr-00371-WHA

STIPULATION TO EXCLUDE TIME FROM
DECEMBER 15, 2020 THROUGH JANUARY 12, 2021
AND [PROPOSED] ORDER
Case No.: 3:20-CR-00371-WHA

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of pending motions, and so that defense counsel can continue to prepare, including by reviewing the

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4 S S 2 time from December 15, 2020 through January 12, 2021 from computation under the Speedy Trial Act until January 12, 2021, and further stipulate and agree that the ends of justice served by excluding the discovery the government has produced. Accordingly, the parties stipulate and agree to exclude time (h)(7)(A), (h)(7)(B)(ii), (h)(7)(B)(iv).outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. §§ 3161(h)(1)(D),

7 6 counsel for the defendant to file this stipulation and proposed order. The undersigned Assistant United States Attorney certifies that he has obtained approval from

SI TI SO STIPULATED

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United States Attorney DAVID L. ANDERSON

Senior Litigation Counsel s/ Michael G. Pitman COREY J. SMITH G. PITMAN

Attorneys for United States of America

Assistant United States Attorney

MICHAEL

s/ Neal J. Stephens NEAL J. STEPHENS

Counsel for Defendant ROBERT T. BROCKMAN

[PROPOSED] ORDER

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28 27 26 25 24 exercise of due diligence. prepare, including by reviewing discovery the government has produced, taking into account the complexity of the case, because of pending motions, and so that defense counsel could continue to from Court on December 15, 2020 and for good cause shown, the Court finds that time should be excluded December 15, 2020 through January 12, Based upon the facts set forth in the stipulation of the parties and the representations made to the 18 U.S.C. \$\$ 3161(h)(1)(D), (h)(7)(A), (h) (7)(B)(ii), (h)(7)(B)(iv). The 2021 under the Speedy Trial Act because of the

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and the defendant in a speedy trial. January 12, computation under the Speedy Trial Act. ORDERED that the time from December 15, 2020 through January 12, 2021 shall be excluded from Court further finds that the ends of justice served by excluding the time from December 15, 2020 to 2021 from computation under the Speedy Trial Act outweigh the best interests of the public Therefore, and with the consent of the parties, IT SI HEREBY

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DATED: ____

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SO ORDERED

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WILLIAM ALSUP
United States District Judge

STIPULATION TO EXCLUDE TIME FROM DECEMBER 15, 2020 THROUGH JANUARY 12, 2021 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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27 26 25 24 23 22 21 20 19 18 17 16 15 13 12 1 10 14 9 S S ∞ 7 6 4 2 that time should be excluded under the Speedy Trial Act because of the complexity of the case, because another motion hearing set for January 12, 2021. Senior Litigation Counsel LEE F. LANGSTON (NYBN 4910311) CHRISTOPHER M. MAGNANI (Maryland) 2020 through January 12, 2021. defendant Robert T. Brockman, that time be excluded under the Speedy Trial Act from December 15, Attorneys for the United States of America Trial Attorneys COREY J. SMITH (MABN 553615) michael.pitman@usdoj.gov Telephone: (408) 535-5040 Facsimile: (408) 535-5081 San Jose, California 95113 MICHAEL G. PITMAN (DCBN 484164) Chief, Criminal Division HALLIE HOFFMAN (CABN 210020) United States Attorney DAVID L. ANDERSON (CABN 149604) United States Department of Justice, Tax Division ROBERT T. BROCKMAN UNITED STATES OF AMERICA 150 Almaden Boulevard, Suite 900 Assistant United States Attorney < A motion hearing was held on December 15, 2020, and the next scheduled date in this matter is It is hereby stipulated by and between counsel for the United States and counsel for the Plaintiff. Defendant. NORTHERN DISTRICT OF CALIFORNIA UNITED STATES DISTRICT COURT SAN FRANCISCO DIVISION The government and counsel for the defendant agree FROM DECEMBER 15, 2020 THROUGH JANUARY 12, 2021 AND [PROPOSED] ORDER STIPULATION TO EXCLUDE TIME Case No.: 3:20-cr-00371-WHA

STIPULATION TO EXCLUDE TIME FROM DECEMBER 15, 2020 THROUGH JANUARY 12, 2021 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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of pending motions, and so that defense counsel can continue to prepare, including by reviewing the

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S S 4 2 time from December 15, 2020 through January 12, 2021 from computation under the Speedy Trial Act until January 12, 2021, and further stipulate and agree that the ends of justice served by excluding the discovery the government has produced. Accordingly, the parties stipulate and agree to exclude time (h)(7)(A), (h)(7)(B)(ii), (h)(7)(B)(iv).outweigh the best interests of the public and the defendant in a speedy trial. 18 U.S.C. §§ 3161(h)(1)(D),

7 6 counsel for the defendant to file this stipulation and proposed order. The undersigned Assistant United States Attorney certifies that he has obtained approval from

SI TI SO STIPULATED

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United States Attorney DAVID L. ANDERSON

Senior Litigation Counsel s/ Michael G. Pitman MICHAEL COREY J. SMITH G. PITMAN

Attorneys for United States of America

Assistant United States Attorney

s/ Neal J. Stephens NEAL J. STEPHENS

Counsel for Defendant ROBERT T. BROCKMAN

[PROPOSED] ORDER

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28 27 26 25 24 exercise of due diligence. prepare, including by reviewing discovery the government has produced, taking into account the complexity of the case, because of pending motions, and so that defense counsel could continue to from Court on December 15, 2020 and for good cause shown, the Court finds that time should be excluded December 15, 2020 through January 12, Based upon the facts set forth in the stipulation of the parties and the representations made to the 18 U.S.C. \$\$ 3161(h)(1)(D), (h)(7)(A), (h) (7)(B)(ii), (h)(7)(B)(iv). The 2021 under the Speedy Trial Act because of the

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Case 3:20-cr-00371-WHA Document 73 Filed 12/17/20 Page 3 of 3

January 12, 2021 from computation under the Speedy Trial Act outweigh the best interests of the public Court further finds that the ends of justice served by excluding the time from December 15, 2020 to

and the defendant in a speedy trial. Therefore, and with the consent of the parties, IT IS HEREBY

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ORDERED that the time from December 15, 2020 through January 12, 2021 shall be excluded from

computation under the Speedy Trial Act.

DATED: Decembe

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IT IS SO ORDERED

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December 17, 2020

WILLIAM ALSUP
United States District Judge

STIPULATION TO EXCLUDE TIME FROM DECEMBER 15, 2020 THROUGH JANUARY 12, 2021 AND [PROPOSED] ORDER Case No.: 3:20-CR-00371-WHA

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)	27	26	24 25	23	22	20	19	18	17	16	15	14	13	12	11	10	9	∞	7	6	5	4	သ	2	-	<u> </u>
	18 U.S.C. § 4241(a), Mr. Brockman must be accorded a hearing to determine whether he is	The government has conceded the sole issue raised on the defense's motion:	I. THE GOVERNMENT HAS CONCED GRANTED	MOTION FOR A HEARING TO DETE IS COMPETENT TO AS			Defendant.	ROBERT T. BROCKMAN,	v.	Plaintiff,	UNITED STATES OF AMERICA,	SAN FRANCI	NORTHERN DISTRI	UNITED STATES	Attorneys for Defendant ROBERT T. BROCKMAN		Telephone: +1-650-739-3939 Facsimile: +1-650-739-3900	1755 Embarcadero Road Palo Alto, CA 94303	JONES DAY Silicon Valley Office	Vincent Doctor (State Bar No. 319408) vdoctor@jonesday.com	Neal J. Stephens (State Bar No. 152071) nstephens@jonesday.com	Facsimile: +1-832-239-3600	Houston, TX 77002.2712 Telephone: +1-832-239-3939	JONES DAY 717 Texas, Suite 3300	jvarnado@jonesday.com	Issue & Vernado (State Bor No. 211067)
	orded a hearing to determine whether he is	sue raised on the defense's motion: pursuant to	THE GOVERNMENT HAS CONCEDED THAT THE MOTION SHOULD BE GRANTED	MOTION FOR A HEARING TO DETERMINE WHETHER MR. BROCKMAN IS COMPETENT TO ASSIST IN HIS DEFENSE		Judge: Hon. William Alsup Place: Courtroom 12		ASSIST IN HIS DEFENSE	REPLY IN SUPPORT OF MOTION FOR A HEARING TO DETERMINE WHETHER	DEFENDANT ROBERT T. BROCKMAN'S	Case No. 3:20-cr-00371-WHA	SAN FRANCISCO DIVISION	NORTHERN DISTRICT OF CALIFORNIA	UNITED STATES DISTRICT COURT									250 Vesey Street New York, NY 10281.1047	kkeneally@jonesday.com JONES DAY	New York State Bar No. 1866250	Vothern Voncelly (appearance are has vise)

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competent to assist in his own defense. Gov't Resp. at 1 (the "Response"), ECF No. 69; see also

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and any other issues relevant to competency proceedings

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Gov't Resp. at 2 ("As the Motion explained, the threshold for holding a competency hearing is low, and it is satisfied in this case.").

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Mr. Brockman, a proposed schedule for the actual competency hearing and other proceedings proposed for admission at a hearing, the sequence and timing of further examinations competency proceedings should be conducted in this case, the defense has asked the prosecutors should proceed. Now that the government has abandoned its indefensible position that no hearing without a contested motion, and then turning to the next steps as to how the hearing to meet and confer over appropriate, reciprocal discovery of evidence relevant to competency and The government could have saved this Court's and the defense's time by agreeing to the of

II. AN INDEPENDENT EXAMINATION OF MR. BROCKMAN MUST TAKE PLACE IN A NON-CUSTODIAL SETTING

in which an examination of Mr. Brockman should take place It would appear that the only remaining open issue, apart from scheduling, is the manner

counsel asked that the government interview the doctors, with a pledge that the defense would not disease or Lewy body dementia. Keneally Decl. ¶ 28, Ex. J at 1–2, 7, Ex. P at 1.2 Defense performed on Mr. Brockman, which showed irrevocable damage to critical neurons responsible to the Indictment: In early April 2020, defense counsel provided medical reports and letters from have had an independent medical examination conducted, during a nearly six-month period prior for producing dopamine—a visible, measurable marker for dementia caused by Parkinson's Brockman lacks the ability to assist in his defense, along with the results of a DaTscan Brockman's four diagnostic and treating doctors, setting out their medical conclusion that The government had unhindered access to Mr. Brockman's medical records, and could

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center/exams/nuclear-medicine/datscan.html (last visited Dec. 17, 2020); see also ¹ A DaTscan is "the first and only FDA-approved aid in differentiating a relatively benign condition, essential tremor, from Parkinsonian syndromes (PS)." https://www.cedars-sinai.org/programs/imaging-Dec. 18, 2020) (summarizing relationship between damage to dopamine transmitters and Parkinson's disease and Lewy body dementia). https://www.hopkinsmedicine.org/health/conditions-and-diseases/dementia/dementia-with-lewy-bodies (last visited

in support of the Motion. ECF No. 64-1. ² "Keneally Decl." refers to the Declaration of Kathryn Keneally, affirmed December 8, 2020 and submitted

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government's choosing. counsel also offered to make Mr. Brockman available for examination by medical experts of the participate, either by preparing the witnesses in advance or attending the interviews, and provided 6 waivers pursuant to the Health Insurance Portability and Accountability Act ("HIPAA waivers") allow full access to Mr. Brockman's medical information. Keneally Decl. ¶ 28 Keneally Decl. ¶ 28. Defense

custody evaluation'... is not sufficient to demonstrate the necessity of a custodial examination." conclusion that "an in-custody evaluation is likely to be more comprehensive than an out-ofand findings of fact following a hearing. 09 (5th Cir. 1986) (same). Such compelling interests must be substantiated by specific evidence limits on custodial competency examination); In re Newchurch, 807 F.2d 404, 408 also United States v. Deters, 143 F.3d 577, 582-84 (10th Cir. 1998) (explaining due process served by outpatient evaluation.³ United States v. Neal, 679 F.3d 737, 741 (8th Cir. 2012); see liberty only if the government establishes "compelling governmental interests" that cannot be professionals and staff." discretionary authority to "commit [Mr. Brockman] to be examined for a reasonable period, but legal basis for its position, the government now makes the stunning request that the Court invoke expert to conduct an independent examination of Mr. Brockman. defense counsel, the government has never—not before Indictment and not now—identified any not to exceed thirty days'" for observation by "trained Bureau of Prisons mental health Krauth, 2010 WL 428969, at *5 United States v. also The law is to the contrary. Due process mandates that a defendant be deprived of his Despite having access to all of this information, and the proffer of full cooperation from United States v. Song, 530 F. App'x 255, 260-61 (4th Cir. 2013). Parks, 2018 WL 2090821, *4 (W.D. Gov't Resp. at 2–3 (quoting 18 U.S.C. § 4247(b)); 18 U.S.C. (N.D. Iowa Feb. 2, 2010)). Neal, 679 F.3d at 741–42; Deters, 143 F.3d at 582–84; Ky. May 4, 2018) (quoting United States v. Instead, citing no medical or The generalized S 4241(b).

These prosecutors' desire to have Mr. Brockman remanded also contradicts Department of

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⁽vacating and remanding § 4241(b) commitment order on interlocutory appeal). 89 (6th Cir. 1996) (same, reversing commitment order); United States v. Neal, 679 F.3d 737, 740 (8th Cir. 2012) commitment under § 4241(b) is immediately appealable); United States v. Davis, 93 F.3d 1286, 1288. subject to immediate appeal. Due process safeguards also make orders remanding defendants for custodial evaluation under § 4241(b) See, e.g., United States v. Deters, 143 F.3d 577, 581 (10th Cir. 1998) (holding

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manual-8-bureau-prisons (last visited Dec. 21, 2020). and Functions Manual § 8, available at https://www.justice.gov/jm/organization-and-functionscannot safely be examined in the community." commitments to the custody of the Attorney General being reserved for those individuals who should, wherever possible, be done in the community by local psychologists/psychiatrists, with health resources to their limits, incompetency (Section 4241) and insanity (Section 4242) studies Justice policy. "Since the requirements of these provisions stretch the Bureau of Prison's mental U.S. Dep't of Justice, Just. Manual, Organization

where safeguards, Keneally Decl. Ex. O at 4, 7, Ex. R. at 5, 7, and the government nowhere addresses defendant was malingering). that defendant was not malingering more reliable than custodial evaluator's conclusion that included conclusion that defendant was not malingering); United States v. Hernandez, address malingering. See United States v. Buckingham, 2020 WL 7238273, *2-3, 10the contrary, courts routinely accept non-custodial evaluations that include built-in testing why an independent expert cannot meet this standard in a non-custodial setting 2018 WL 2738880, *8–15 (N.D. Ohio June 7, 2018) (finding outpatient evaluator's conclusion S N.D. malingering is a concern," Gov't Resp. at 2, is equally unsupported and insufficient. Ala. Dec. 9, 2020) (finding defendant incompetent based on outpatient evaluations government's assertion here that "[a] custodial placement is appropriate in Dr. York's forensic testing of Mr. Brockman included these cases that

believe that a custodial evaluation could be completed more quickly than Mr. custodial examination prior to the competency hearing. custody examination would take longer"). examination. raising the issue" of competence. Parks, 2018 WL 2090821, at *5. Nor is there any reason to Brockman "is currently on pretrial release," and "should not lose his freedom simply by There is no reason, much less a compelling reason, for Mr. Brockman to be subjected See Krauth, 2010 WL 428969, at *4 n.4 (noting that it is "more likely that an in-First, and "[m]ost importantly an outpatient to

as well as progressive dementia, remanding Mr. Brockman to the custody of the Bureau of outweighs any "benefit" Further, in the midst of the COVID-19 pandemic the risk to Mr. Brockman's health far of incarceration. As a 79 year-old cancer survivor with a heart condition

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at ¶ 9; see also https://www.bop.gov/coronavirus/ (last visited Dec. 17, 2020) (reporting that pandemic). nearly a quarter of all federal inmates have been diagnosed with COVID-19 over the course of the Prisons would dramatically increase his risk of contracting the disease. See Keneally Decl. Ex. G

Surely nothing to be gained, and considerable risk, by requiring Mr. Brockman to travel to a distant psychiatrist to conduct the forensic examination." would allow him to travel to and from the appointment each day, a qualified psychologist or medical facility in the world, and its hospitals have reliably been ranked among the nation's best.⁵ occur on an out-patient basis near his home in Houston, the fourth-largest city in the United States, with over 18,000 licensed physicians.⁴ location, much less to be incarcerated "the United States can locate, within a driving distance of [Mr. Brockman's] home that The defense submits, instead, that the court-ordered examination of Mr. Brockman should Houston's Texas Medical Center is the larges Parks, 2018 WL 2090821, at *5. There is

II. THE GOVERNMENT'S CONCESSION THAT A HEARING SUPPORTS THE DEFENSE'S MOTION FOR TRANSFER IS REQUIRED

of many grounds supporting transfer, that a competency hearing should be held in the Southern Response filed on the evening of December 15, 2020, following a hearing on that same day District of Texas, where Mr. Brockman resides and where all of his doctors practice. ⁶ the Southern District of Texas (the "Transfer Motion"), ECF No. 49. The defense set out, as one before this Court on the defense's Motion to Dismiss in Part for Lack of Venue and to Transfer to The government conceded for the first time that a competency hearing is necessary in its Transfer

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⁴ https://www.houston.org/houston-data/health-care-houston (last visited Dec. 20, 2020).

report/ (last visited Dec. 20, 2020). ⁵ https://www.tmc.edu/news/2019/07/seven-tmc-institutions-ranked-as-best-hospitals-by-u-s-news-world-

and course of treatment. examined Mr. Brockman in the first instance in response to a referral by his personal doctor to determine a diagnosis Mr. Brockman for diagnostic and treatment purposes. Keneally Decl. Ex. G at ¶ 4, Ex. H, Ex. I, Ex. J, Ex. K. the defense will present them for their expertise, they are third-party witnesses. the instant Motion are not, as the government depicts, experts "retained" by the defense. See Gov't Resp. at 2. Dr. York, a neuropsychologist, who performed subsequent forensic testing at the request of defense counsel the Southern District of Texas at 9, 12, ECF No. 63. The doctors whose medical reports were included in support of location of the defense's "experts." Gov't Opp'n to the Mot. to Dismiss in Part for Lack of Venue and to Transfer to ⁶ In opposing the Transfer Motion, the government argued that venue should not be determined by the Keneally Decl. Ex. G at ¶ 4. Each doctor examined

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or during the argument on the Transfer Motion is particularly telling: conspicuous silence concerning its decision to concede the need for a competency hearing before Mot. at 11–13; see also Reply in Supp. of Transfer Mot. at 9–10, ECF No. undercuts the government's opposition to the Transfer Motion. this concession greatly 66. The government's

IV. THE BALANCE OF THE GOVERNMENT'S "RESPONSE" ON THE ISSUES ON THIS MOTION HAS NO BEARING

mischaracterize the defense's position and to "preview" current submission not as an "Opposition," but as a "Response," medical evidence Given its concession on the only issue raised by the Motion, the government captions its "skepticism" about the defense's which it then uses

provided so far, the defense previously stated its support for "an independent expert selected by this adversarial proceeding,8 witnesses and present its evidence. Def.'s Mot. at 19 Houston," and acknowledged the government's right to cross-examine the doctors and other the court, asking only that the examination take place proximate to Mr. Brockman's home in defense is Having "spurned" the defense offer of a cooperative approach at each step so as to "hiding relevant evidence." the government now adds gratuitous but bogus complaints that the Gov't Resp. at 3, 6. In addition to the unilateral discovery force

pages in its "Response" what may be relevant to a competency determination. Thus the government unloads for seven further developed throughout these competency proceedings". Court to some of them at the outset." While ignoring the medical evidence, the government propounds a layman's analysis as and 536 pages of exhibits, "the government's skepticism [that] will be See Gov't Resp. at 4-11. because "it is worth orienting the

the face of its own "evidence." government's "skepticism" is distorted, misleading, and at times flatly incorrect on It is also premature and not germane to the sole issue before this

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⁷ In its groundless contention that Mr. Brockman be remanded for custodial examination, the governreferences a facility in Fort Worth, Texas, implicitly acknowledging that Texas, where Mr. Brockman resides, his medical issues should be addressed. Gov't Resp. at 2-3 government

Honor." without even the defense being there and you spurned that opportunity?" ⁸ The Court: "is it true that they [the defense] offered to let you [the government] talk to the medical people even the defense being there and you spurned that opportunity?" AUSA Pitman: "That is true, Your Dec. 15, 2020 Hr'g Tr. at 33:1-33:4

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4 ω 1 and the government's version rigorously disputed—in the full evidentiary presentation at the in this matter. hearing. Court that the Now that the government has dropped its strategic opposition to that hearing, the parties It is sufficient for present purposes to note that the accurate facts will be presented, government has now conceded in its Response-a competency hearing is necessary

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< INAPPROPRIATE TO EVALUATE THIS ISSUE PRE-INDICTMENT THE GOVERNMENT IS WRONG THAT IT WOULD HAVE BEEN

and the Court can get on with the proceeding guaranteed to Mr. Brockman by due process

been Gov't Resp. at 11. "inappropriate" government's final point in its Response is an attempt to assert that it would have for the government to consider Mr. Brockman's competency pre-indictment.

determinations[,]" Gov't Resp. at 11, fails in the face of the Department's express policy. the should prosecute and will be able promptly to establish guilt beyond a reasonable doubt."). prosecutor abides by them if he refuses to seek indictments until he is completely satisfied that he Justice, Just. Manual § 9-27.230, Comment 7; see also United States v. Lovasco, 431 U.S. 783, appropriate response" include "advanced age, or mental or physical impairment." supporting prosecution. circumstances" should be considered in determining whether there is a substantial federal interest 9-27000-principles-federal-prosecution (last visited Dec. 21, 2020). The Department of Justice Manual § 9-27.110 & Comment; see also § 9-27.220, available at https://www.justice.gov/jm/jmgovernment's investigation when making a decision to indict. See U.S. Dep't of Justice, Just. 795 (1977) ("Rather than deviating from elementary standards of 'fair play and decency,' a Circumstances particular to the accused which 'may suggest that prosecution is not the most health and competency: has made clear that this fundamental responsibility extends to the consideration of an individual's government's contention that it is only for "the Courts, not prosecutors, to make competency It is the essence of a prosecutor's job to review all of the circumstances of the U.S. Dep't of Justice, Just. Manual § 9-27.230, see also § 9-27.220 the United States Justice Manual provides that a "person's personal U.S. Dep't of

issue of his competency addressed before this prosecution may proceed. government has conceded at least this much: Mr. Brockman is entitled to have the Given the government's

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abdication of a pre-indictment review of the evidence, the issue is now squarely for a court to decide

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VI. CONCLUSION

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 ∞ \sim 6 S 4 proceedings against him, to consult with counsel, and to assist in preparing his defense may not defense. in 18 U.S.C. be subjected to a trial." The central issue for the hearing is Mr. Brockman's fundamental right to present a A defendant who "lacks the capacity to understand the nature and object of the S 4241(a). Drope v. Missouri, 420 U.S. 162, 171 (1975). This principle is embodied

proceeding should take relevant to competency proceedings. Mr. and proposed for admission at a hearing, the sequence and timing of further examinations of hold a hearing under 18 U.S.C. § 4241 to determine whether he lacks the capacity to assist in his will propose to the Court appropriate, reciprocal discovery of evidence relevant to competency defense. the Transfer Motion Brockman, a proposed schedule for the hearing and other proceedings, and other issues Now that the government has dropped its opposition, the parties agree that a court should The defense is scheduled to meet and confer with the government on December 22, and place in the Southern District of Texas, for the reasons stated in support of The defense continues to believe that the competency

Dated: December 21, 2020 s/ Neal J. Stephens Jones Day Respectfully submitted, NEAL Counsel for Defendant J. STEPHENS

REPLY IN SUPPORT OF MOT.
FOR HEARING TO DETERMINE WHETHER MR. BROCKMAN
IS COMPETENT TO ASSIST IN HIS DEFENSE 3:20-CR-00371-WHA
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ROBERT T. BROCKMAN

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Use this form to order the transcription of proceedings. *CJA counsel should use Form CJA24*. Before completing this form, please visit <u>cand.uscourts.gov/transcripts</u> for complete transcript ordering information. THESE INSTRUCTIONS SUPPLEMENT THE WEBSITE INFORMATION.

- 1. Complete a separate order form for each case number for which transcripts are ordered.
- 2. Complete a separate order form for each court reporter who reported proceedings in the case.
- 3. Complete Items 1-12. Keep a copy of your completed order form for your records.
- 4. E-file this form in the U.S. District Court CM/ECF system. *Exceptions to e-filing*: (a) sealed cases/proceedings; (b) non-parties; (c) pro se parties who are not e-filers. In such cases, mail or hand-deliver a hard copy addressed to the court reporter c/o the Clerk's Office at the Court division where the proceeding was held.
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- Item 11. Sign in this space to certify that you will pay all charges (the deposit plus any additional charges.) An electronic or conformed (/s/) signature is acceptable.
- Item 12. Enter the date of signing the order and certification.

criminal matter to the United States District Court for the Southern District of Texas

laundering, and destruction of and tampering with evidence, this order TRANSFERS the entire

In this prosecution for tax evasion, FBAR violations, conspiracy, wire fraud, money

INTRODUCTION

DISTRICT OF TEXAS

DISTRICT COURT FOR THE SOUTHERN

ACTION TO THE UNITED STATES TRANSFER OF ENTIRE CRIMINAL AND ORDERING IMMEDIATE

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office in the Northern District of California.

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indictment outlines an elaborate scheme, wide-ranging in both time and place (Ind. \P 36–38).

Since 1999, Brockman earned interest through his investments with Vista, a firm with an

He stands accused of concealing those capital gains

Equity Partners and sequestered his billions in capital gains abroad to evade taxation. The

Defendant Robert Brockman allegedly invested more than a billion dollars through Vista

STATEMENT

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UNITED STATES OF AMERICA,

No.

CR 20-00371 WHA

Plaintiff

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NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

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ROBERT T. BROCKMAN,

ORDER GRANTING RULE 21(b) MOTION TO TRANSFER, DENYING MOTION TO DISMISS IN PART FOR LACK OF VENUE,

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Defendant.

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one AUSA based in this district.

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many abroad. The prosecutors include three with the Tax Division (in Washington, D.C.) and

from the IRS by directing his earnings into other financial entities, real property, and accounts,

where the alleged evader lives (for deterrence purposes), the government presented this case to a

Contrary to its written policy of prosecuting tax-evasion cases

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grand jury in San Francisco, rather than Houston where Brockman has long resided. In October

2020, the San Francisco grand jury returned an indictment charging that Brockman failed to

report his capital gains in his returns for tax years 2012-2018; engaged in a twenty-year

Foreign Bank and Financial Accounts (FBARs) to the IRS 2013-2018; committed wire fraud conspiracy to defraud the United States and evade taxes; willfully failed to file Reports

affecting a financial institution (Deutsche Bank); and laundered money, primarily by direction to

These were, most notably, three people with monikers "Individual One,"

his nominees.

"Individual Two," and "Individual Three." Finally, in June 2016, Brockman is said to have

learned of the government's investigation into his actions and he (or his nominees at his

direction) destroyed, altered, corrupted, or tampered with evidence relevant to the grand jury

investigation

health now declines. In late 2018, Brockman underwent testing for abnormal cognitive and Brockman is 79 and resides in Houston, Texas. He has never lived in this district.

physician calls his symptoms "consistent with" one of three conditions, or a combination thereof: physical symptoms. In a declaration filed in support of the instant motion, Brockman's treating

body dementia (a condition in which protein deposits in nerve cells cause dementia and impair (1) Parkinson's disease, (2) Parkinsonism (a condition causing physical tremors), and (3) Lewy

movement) (Keneally Decl. ¶ 10, Pool Decl. ¶¶ 5–7, 9–10).

A grand jury indicted Brockman in October 2020:

Count 1: Conspiracy to defraud the United States and commit tax evasion, in

violation of 18 U.S.C.

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. § 371;

Counts 2 through 8: Tax evasion, in violation of 26 U.S.C

7201;

Counts 9 through 14: Violation of Reports of Foreign Bank and Financial Accounts (FBAR) filing requirements, in violation of 31 U.S.C. §§ 5314 and 5322;

of 18 U.S.C. § 1956(a)(2)(B)(i);

Counts 38–39:

Evidence tampering and destruction of evidence in violation of 18

§ 1956(a)(1)(A)(ii), and international concealment money laundering, in violation

§ 1956(a)(1)(B)(i), tax evasion money laundering, in violation of 18 U.S.C

Concealment money laundering, in violation of 18 U.S

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Counts 35–37:

Counts 15–34:

Wire fraud affecting a financial institution, in violation of 18 U.S.C.

Forfeiture allegations, in violation of 18 U.S.C.

\$\$ 982(a)(1) and 982(a)(2)(A), and

U.S.C \$\$ 1512(b)(2)(B) and 1512(c)(1); and

28 U.S.C.

\$ 2461(c).

competency evaluation.

to the Southern District of Texas. Since filing this motion, Brockman has moved for a

This order on the motion to change venue and dismiss or transfer FBAR

53). He now also moves to dismiss or transfer the FBAR counts and to transfer the entire matter

to 18 U.S.C. § 3237(b). He renews that motion here, but an order herein has since denied it (Dkt.

In November 2020, Brockman moved to change venue on the tax-evasion counts pursuant

VENUE

counts follows full briefing and oral argument.

ANALYSIS

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prosecution in his home district if the basis for venue elsewhere "solely" relies on a defendant's

transferred to the Southern District of Texas. Section 3237(b) enables a defendant to "elect"

under 18 U.S.C. § 3237(b) and Rule 7(c)(1) and (f), the tax-evasion charges should be

In the instant motion, Brockman challenges venue on two grounds. First, he argues that

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change venue under Section 3237(b) and Rule 7 is DENIED

3237(b) and Rule 7. That motion was denied (Dkt. 53). For the same reasons, the motion to

mailing of the tax return into the district. Brockman had previously moved under Section

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government indicted him on those counts in the wrong district. A substantial unresolved

The government

Second, Brockman challenges venue for the FBAR violations and contends that the

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question remains as to whether venue lies in this district for the FBAR counts.

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district, the district containing the central receiving center for the FBAR, or any district where

Bradley, 644 F.3d 1213 (11th Cir. 2011). Clines held that venue lies in the defendant's home

prosecutions: United States v. Clines, 958 F.2d 578 (4th Cir. 1992), and United States v

The prosecution cites two out-of-circuit decisions addressing venue for FBAR

FBARs are centrally received, the Northern District of Virginia

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posits that it can prosecute FBAR charges anywhere a person can submit an FBAR online.

defense views venue as proper in either the Southern District of Texas or the district in which the

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individuals could file FBARs. See 958 F.2d at 583. Bradley, too, held that venue for an FBAR

prosecution could lie anywhere that one could file FBARs (at that time, any local IRS office)

See 644 F.3d at 1252

Those decisions predate 2013, however, when the IRS ceased to allow FBAR filing at local

similar question in United States v. Clinton, 574 F.2d 464 (9th Cir. 1978), with respect to distinguishable. Our court of appeals has not addressed venue for FBAR counts but did tackle a IRS offices and required them to be filed online only. Therefore, Bradley and Clines are

criminal failure to file tax returns. The decision held that venue for failing to file tax returns

attaches "at the defendant's place of residence, or at the collection point where the return should

have been filed." Id. at 465. The decision held that prosecution in the Western District of

Washington, which contained Washington's tax "collection center" (but where the defendant did

not reside) met venue requirements. Since Clinton could have filed his return at the collection

center, venue was proper there

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foundation of Bradley and Clines, it seems doubtful that the government's position could carry seem to agree that the central collection point for FBAR filings sits in Virginia and that 2018, so the earlier IRS rules governing their place of filing do not apply here. the day on this point. Brockman lives in Houston. In light of Clinton and the IRS rule change that eliminates the Brockman stands accused of failing to file FBARs, annually, each year from 2013 through The stronger authority from our court of appeals thus favors the defense Both sides here

the indictment also charges a specific FBAR penalty provision, Section 5322(b), with each The government argues, alternatively, that venue is proper as to the FBAR counts because

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would seem to be our "essential conduct element." Magassouba, however, miss the mark: the failure to file an FBAR is the primary conduct and of bank fraud, the location of the bank fraud laid venue. Id. at 205-06. It reasoned that predicate bank fraud was "an essential element" of aggravated identity theft. Rodriguez-Moreno and Moreno and held that when identity theft occurred "during and in relation to" a predicate crime Similarly, United States v. Magassouba, 619 F.3d 202 (2d Cir. 2010), applied Rodriguez-

resources to find venue here and proceed through trial, only to likely have the FBAR counts interests of justice favor transfer of all counts. vacated by our court of appeals. will have a supporting role in the tenth Platt factor, discussed below, since it would waste need not make a definitive ruling, however, because, as discussed below, convenience and the AS MOOT In short, the law on venue for the FBAR counts seems to favor the defense. The motion to dismiss counts nine through fourteen is **DENIED** The doubtfulness of venue for the FBAR counts This order

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discretion."

Id. at 564.

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It does not, however, assert that the law requires deference to its choice of district

the government opposes transfer and asserts that the Platt factors militate in favor of our district

Brockman urges that the Rule 21(b) factors favor transfer.

For its part,

receive wide latitude and will not be overturned unless the results "clearly indicate an abuse of

States, 416 F.2d 558, 562 (9th Cir. 1969). Trial courts undertaking the analysis, however

the interests of justice warrant a change of venue under Rule 21(b). See Wagner v. United

court of appeals has held that a defendant must make a sufficient showing that convenience

and corporations. See, e.g., United States v. Testa, 548 F.2d 847, 856-57 (9th Cir. 1977). Our

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miles importantly, Brockman does reside in Houston and this Platt factor focuses on just that Houston than anywhere else," but argues that he peregrinated around the globe. The year is now lives 1900 miles from here. The government concedes that in 2019 Brockman resided "more residence. It favors transfer (Ind. ¶ 1, Keneally Decl. Exh. A, Opp. at 7) 2021 and travel patterns have radically changed due to the COVID-19 pandemic. from the United States District Court for the Southern District of Texas. By contrast, he First (location of the defendant), Brockman lives in Houston. Specifically, he lives

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outnumber, but only slightly, those residing closer to Houston. (unspecified) local "victim entities," against whom Brockman allegedly committed wire fraud three to five local trial witnesses, including at least one witness from each of the two Second (location of possible witnesses), the trial witnesses residing closer to this district The government has identified

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government will also call one to three "fact[] witnesses" from Vista's local office (Ind. ¶¶ 161− 189, 191(a), Opp. at 8, 3, Ind. ¶ 39).

asserted at the hearing that as of late 2019, prosecutors at least met with them locally.

Although the government could not confirm that the two employees still reside in the district, it

starring roles at trial if the indictment is true (Ind. ¶¶ 8–13, 31, 32, 34–36, 39, 46–54, 56–58, 61– Mississippi-based witnesses reside far closer to Houston than San Francisco and will have there, it would be inconvenient to both venues under consideration. Both the Austin- and resides abroad. Tamine, who the government stated at the hearing is now living in the United identified "Individual One" in the indictment as Evatt Tamine; parties agree that he currently government also agreed at the hearing that "Individual Three," relevant to the accusations that prosecution agreement with the government, and features prominently in the indictment. 80, 82–127, 165, 166, 172–185, 195, 196). Kingdom, lies beyond the subpoena power of the Court but if a deposition of him were taken Brockman altered or destroyed evidence, lives in Oxford, Mississippi. The government that "Individual Two" refers to Robert Smith. He lives in Austin, Texas, has entered a non-With respect to witnesses proximate to Houston, the government confirmed at the hearing

resides in Houston and very likely will be a witness at trial (Keneally Decl. ¶¶ 29, 22–24, Exh. H at 7, ¶¶ 19, 35–36). whether they will be called at trial, so this order will ignore them. Brockman's tax preparer Brockman's counsel also declares, without further explanation, that "at least 17" subpoenas been presented to" parties local to Houston. We have no information as to their roles or

important pretrial issue of competency (Keneally Decl. ¶¶ 5–16, Dkt. 64, Pool Decl. ¶ 8) stated roles in testifying about Brockman's changed cognitive function and, thus, in the feature less in the central question of the trial but deserve at least some consideration for their friends and colleagues) who will participate in a potentially dispositive pretrial hearing; they District of Texas-based witnesses (four doctors, Brockman's wife, and an unspecified number of Brockman has, moreover, moved for a competency hearing and his counsel name Southern

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S 1 government acknowledged at oral argument). The indictment alleges that over the next two throughout the early 2000s. local events occurred at the beginning of the scheme, in approximately 2000, around the time the indictment itself. Factoring in, to a lesser extent, the convenience of the Houston-based two of the three witnesses for whom Houston is more convenient are called out as important in Austin, Texas. At some point, Individual Two also relocated to Texas (a fact that the Vista's very first fund; in fact, he, alone, invested. He also allegedly worked with Vista Individual Two resided in the district as well. Brockman's actions locally included investing in Vista's founding. the United States in the district "and elsewhere" between 1999 and 2019, but the most significant Colorado, Northern California, and abroad. Per the indictment, Brockman conspired to defraud districts competency witnesses, the location-of-witnesses factor appears evenly split between the two witnesses does not dramatically tip the scale against transfer, especially keeping in mind that the by a count of three (possibly as many as five) to three. The possibility of more numerous local Third (location of events likely to be at issue), the events of this case occurred in Texas All told, the tally of trial witnesses favors, just barely, the Northern District of California At that time, it maintained its principal place of business in San Francisco and In 2011 however, Vista opened offices elsewhere, including

2010 and the scheme involved six false statements to various debt-securities holders including two local "entities." The emails to individuals in the district dated March 2009 through April wire transmissions to local individuals and companies as well as an unnamed local investor and The counts most explicitly tied to this district allege wire fraud, which involved emails and

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international investments, bought real property and even a yacht abroad, all purportedly to help

Brockman's money in funds organized solely abroad and transferred his pre-tax capital gains to

Other nominees, on Brockman's behalf, made further

work for Brockman, meanwhile, certainly implicated locations abroad: Vista invested

him avoid paying taxes on those earnings (Ind. ¶¶ 29, 6–8, 42, 14, 15, 39, 89, 91).

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offshore accounts, among other places.

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decades, Vista worked at Brockman's behest, but does not name the locations of individuals

Vista who, after the company's 2011 expansion, acted on Brockman's behalf. Vista's purported

The events in the indictment also include two San Francisco-based financial transfers:

Francisco bank to a Caribbean bank, and another, of more than \$41 million, from a bank in San Brockman directed one transfer of over \$14 million of his Vista investment gains from a San

the indictment, which allege, vaguely, that Brockman interfered with evidence "[i]n" the district Francisco to one in Switzerland. The final connection to the district appears in the last counts of

"and elsewhere." The transfers that the indictment identifies as being from or to this district

that the indictment names our district fifty-one times and San Francisco twice (in addition), but it however, represent just a few out of a nearly two-decade period of active investments.

also uses the phrase "and elsewhere" to refer to events' locations twenty-two times. Brockman

indeed maintained out-of-state residences and it remains far from clear that any of Vista's actual

work on his behalf "occurred" in its local office after 2011. Given the considerable doubt that

remains about the locations of many events in the indictment, the location-of-events Platt factor

either favors neither district or favors this district slightly (Ind. ¶¶ 191, 192, Keneally Decl

Fourth (the location of documents and records likely to be involved), this factor favors

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most events occurred either in the Southern District of Texas, where he maintained a residence

neither district. Brockman argues that records sit where the events happened, and claims that

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the victim entities supposedly underpriced the debt securities (Ind. ¶¶ 19, 189, 178, 179, 186,

that the debtor corporation could have continued to make payments. Lacking that information

they would have viewed his offer as that of an officer of the debtor corporation and as a signal

materially misled the victim entities because, had they known about Brockman's involvement,

proxy. He never revealed his role. This deceit, the government explained at the hearing

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Deutsche Bank then acquired the debt securities from local "victim entities" and an investor in

order to sell them to Brockman. Brockman finally purchased the debt securities through his

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owed by his own software corporation: Brockman first sought to purchase debt securities from

the debt administrator, Deutsche Bank, using a proxy (a nominee individual) to disguise his role

"ones in" this district. The alleged fraud consisted of Brockman's purchase of debt securities

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prosecution here.

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factor).

This factor does not favor either district

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elements" factor (number ten). See, e.g., United States v. Bowdoin, 770 F. Supp. 2d 133, 139

disrupt his "business." Brockman argues that his health now is his "business" and that this Platt

This order evaluates Brockman's health below, under the "special

Fifth (disruption of business), both sides agree that Brockman has retired. Trial will not

(D.D.C. 2011) (analyzing the physical health of a defendant's wife under the "special elements"

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factor favors transfer. Not so.

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electronic form and transportable to either district. This factor favors neither district

appears minimal and to the extent anyone needs to do so, those records will very likely be in

The defense will probably rely on its own records. The need to subpoena third-party records

Via the grand jury and the IRS, the government already has the documents it needs.

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or abroad.

locations of many events in the case remain unclear. The expense factor is a draw

the case and, therefore, that this factor is either neutral or favors transfer.

To repeat, the

however, that prosecuting the whole case in the Southern District of Texas would cost more than

Brockman argues that trial will be less expensive if held closer to the events in

counts (the FBAR counts) would be extraordinarily expensive. The government does not claim,

Sixth (expense to the parties), the government argues that transferring a fraction of the

York and Washington, D.C.

case, three of the four attorneys on the case come from the Tax Division in Washington, D.C

Since each side has at least one attorney living in our district, and other attorneys residing

that his attorneys reside in both this district and the Southern District of Texas, as well as in New

The government states that while one local AUSA is working the

Seventh (location of counsel), Brockman admits that this factor favors neither district and

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elsewhere, the location of counsel factor is also a draw

(Opp. at 11).

Eighth (accessibility of the location of trial), both Houston and San Francisco constitute

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major metropolitan areas. This factor remains neutral

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took 12.4 months in this district compared with 4.2 months in the Southern District of Texas

Ninth (docket conditions), the median time from case filing to disposition in felony cases

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.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2020.pdf (last visited Jan. See Federal Management Statistics, Administrative Office of the Courts, https://www

currently show substantially less docketing delay.

The government argues that transfer itself will

updated Dec. 17, 2020), https://www.txs.uscourts.gov/. And, the Southern District of Texas does

CoronaVirus Disease 2019 (COVID-19) - SDTX Related Orders and Courthouse Statuses (last

suspended jury trials, but as of early January, intended to resume them on January 19, 2021.

transmission and the critical dearth of ICU capacity. The Southern District of Texas has also

has suspended all in-person proceedings for the time being due to the rate of COVID-19

Although delays in trials everywhere hinge on the COVID-19 pandemic, our district

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4, 2021).

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slow the case's progression and offset the benefits of a faster docket, citing United States

Larsen, No. 13 CR 688 JMF, 2014 WL 177411, at *3 (S.D.N.Y. Jan. 16, 2014) (transfer

unwarranted after accounting for the time necessary to execute transfer). That felony cases

progress in the Southern District of Texas at nearly three times the rate here, however, renders its

request but on the relative conditions of the dockets. argument less potent. The government also argues that Brockman has not requested an earlier conditions factor favors transfer. trial date than this district can accommodate. This factor does not turn on the defendant's As circumstances now stand, the docket-

three. condition." physician's opinion. Dr. James L. Pool opines that facing trial in a district other than Houston doctors prior to the indictment to understand his health for themselves. The government spurned either Parkinson's disease, Parkinsonism, Lewy body dementia, or "some combination" of all His cognitive ability, memory, and mobility have declined, due to what his doctors believe is how or on the nature of the cardiac condition.) Dr. Pool declares that it is "not medically from home threatens "creating a risk to his existing cardiac condition" but does not elaborate dementia," would disorient Brockman "in a manner that could accelerate the deterioration of his mental thousands of miles from home. the offer during the months in which it remained open. Now, the government seeks to try him Tenth (special elements and interests of justice), Brockman will turn 80 during this case Counsel for Brockman offered the government the chance to interview Brockman's as well as short- and long-term memory loss. By way of explanation, he declares that Brockman experiences "progressive In support of his motion to transfer, Brockman offers (Dr. Pool also opines that a trial far

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United States Department of Justice,

inform our assessment of the "interests of justice:"

of justice" so demand. FRCrP 21(b). The United States Department of Justice recommendations

Second, in a Rule 21(b) analysis, courts may also transfer a criminal action if the "interests

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district (and elsewhere).

special-elements Platt factor: first, Rule 21(b) requires the court to consider victims'

locations.

The Rule 21(b) analysis must also examine two additional elements under the

See FRCrP 21, Advisory Committee Notes. Two victims, both corporations, operate in our

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serious illness from the novel coronavirus (Pool Decl. ¶¶ 5, 7–9, 10).

for Brockman to travel to San Francisco due to his advanced age and elevated risk of

advisable"

of the taxpayer's residence or principal place of business, because prosecution in that judicial district usually has the most significant

establish venue for a criminal tax prosecution in the judicial district It is the policy of the Department of Justice generally to attempt to

counts favors the defense. It would better serve the interests of justice to keep the case together

It would similarly defeat the ends of justice to try the

this case under DOJ policy. Additionally, the stronger view of mandatory venue for the FBAR

DOJ policy statement delineates an important interest. Houston is clearly the proper location for

Criminal Tax Manual, 6.01[2] Policy Considerations.

This

than to sever and transfer those counts.

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twice.

Given Brockman's age and questionable health, we do not have the luxury to try this case

In the interests of justice, it should be tried where venue is unquestionably proper and that

The government also argues that rates of COVID-19 infection

reasons stated above, such a reversal would be a realistic scenario should the case remain here

whole case here only to have our court of appeals vacate those counts for a retrial. For the

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is the place of his residence.

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that, therefore, the interests of justice favor trial here.

The data are highly changeable and so do

appeared worse in the Houston area than in San Francisco at the time it filed its opposition and

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This factor clearly favors transfer.

the interest in a singular prosecution outweigh the location of victims in this tenth Platt factor

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not sway the special-elements factor. Brockman's health, the public interest in deterrence, and

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transfer. The Rule 21(b) motion is **GRANTED**

but, if so, only slightly. Five other factors appear neutral (location of witnesses, location of

The location-of-events factor possibly favors this district

documents, location of counsel, accessibility of the court, and expense). The Platt factors favor

crowding, and the special factor of Brockman's illness and interests of justice). One factor

In summary, three Platt factors weigh in favor of transfer (location of defendant, docket

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militates against transfer (disruption).

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Case 3:20-cr-00371-WHA

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Filed 01/04/21

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UNITED STATES DISTRICT JUDGE

ILLIAM ALSUP

Southern District of Texas

The Clerk shall transfer this criminal action to the United States District Court for the

CONCLUSION

IT IS SO ORDERED.

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Dated: January 4, 2021.

Case 3:20-cr-00371-WHA

Document 78

Filed 01/06/21

Page 1 of 1

Reset Form

CAND Pay gov Application for Refund (rev. 10/19)

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

APPLICATION FOR REFUND (USDC-CAND PAY.GOV)

PAY.GOV TRANSACTION DETAILS

IMPORTANT:

- Complete all required fields (shown in red*); otherwise, your request may be denied and require resubmission.
- transaction that appears on the docket. This information can be found in the Pay.gov screen receipt or confirmation email. In fields 3-6, enter the information for the **incorrect** transaction (the one for which you are requesting a refund), not the correct

Efile this form using Other Filings ightarrow Other Documents ightarrow Application for Refund.

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ecthelpdesk@cand.uscourts.gov Monday -Friday 9:00 a.m.-4:00 p.m. View detailed instructions at: cand.uscourts.gov/ecf/payments. For assistance, contact the ECF Help Desk at 1-866-638-7829 or

FOR U.S. DISTRICT COURT USE ONLY	URT USE ONLY
Refund request:	e reason for denial)
Approval/denial date:	Request approved/denied by:
Pay.gov refund tracking ID refunded:	Agency refund tracking ID number: 0971-
Date refund processed:	Refund processed by:
Reason for denial (if applicable):	
Referred for OSC date (if applicable):	